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Task Force Data Request Summary

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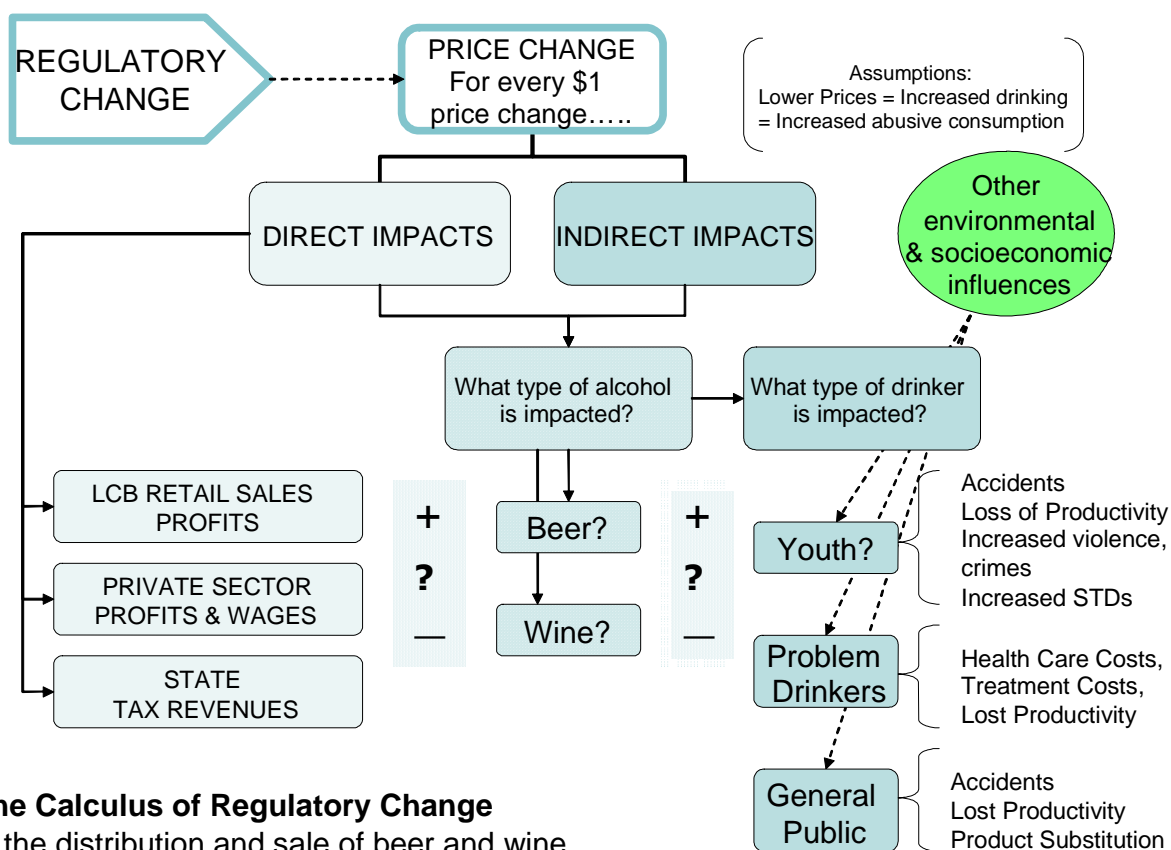
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Task Force Data Request Summary

This is the list of data requests received at the August 3 Task Force meeting. Responses to the data requests were provided by task force members, the LCB, and through research conducted by Sterling Associates. The document was regularly updated and redistributed to the Task Force members.

1. Are there any data that would support the price differentials, that is where the price actually makes a difference in misuse and abuse? Is there really a difference between 38% and 43%? (S. Lynn)

The correlation between price and consumption levels is a very complex question. And although research today can provide guidance as to the direction of a correlation (if prices rise, does drinking go up or down), it is not possible at this time to quantify all the direct and indirect impacts of a change in price. The following chart illustrates the complexities involved in determining the direct and indirect impacts of price changes, without attaching an actual dollar figure.



ADDED RESPONSE FROM SHELLEY SIEVEKING:

It has been stated in the task force meetings that raising prices causes abusive consumption to decline. I think we need to be careful about accepting that as undisputed fact and then making

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decisions that flow from that as an accepted assumption. There is significant evidence to the contrary-evidence that raising prices does not cause abusive consumption to decline.

- In 1995, Manning et al conducted a study called “The demand for alcohol: The differential response to price,” published in the Journal of Health Economics. Using data from the National Health Interview Survey, Manning examined drinking behaviors among light, moderate and heavy drinkers and found that the consumption levels of the heaviest drinkers were not influenced by the price of alcohol. This suggests that those most likely to abuse alcohol do not decrease consumption based on price increases.
- Those who drink alcohol most heavily may substitute lower-cost brands, rather than stop consuming abusively. A recent study notes that previous researchers may have not considered this “substitution” effect. In an article by Gruenwald, et al., titled “Alcohol prices, beverage quality and the demand for alcohol: Quality substitutions and price elasticities,” in *Alcoholism: Clinical and Experimental Research* (2006) the authors noted that earlier studies may have been too simplistic, because rather than “simply lowering their quantity consumed in response to price increases, drinkers appear [also] willing to switch to lower-cost brands in order to maintain their alcohol consumption.”
- In 1993, Treno, et al. suggested that, as a practical matter, consumers substitute not only among brands or even categories of alcohol beverages, but also by increasing the portion consumed more inexpensively at home or at friends’ homes, rather than at more expensive on-premise licensees. See “Alcohol beverage price spectra: opportunities for substitution,” in *Alcoholism: Clinical and Experimental Research* (1993).

The theory that under-age drinkers are especially price sensitive is also contradicted by several studies.

- Chaloupka and Wechsler used the Harvard College Alcohol Survey to study college-age men who consume alcohol. See “Binge drinking in college: The impact of price, availability, and alcohol control policies,” *Contemporary Economic Policy* (1996). The researchers found that beer prices did not have an impact on drinking by male college drinkers, whether or not they were under the legal drinking age. Under-age college women were slightly influenced by beer prices, but of-age college women were insensitive to price.
- Kenkel’s earlier study, “Drinking, driving and deterrence: The effectiveness and social costs of alternative policies,” in *Journal of Law & Economics* (1993), came to the same conclusion, finding no correlation between alcohol prices and either heavy drinking or drinking and driving by males ages 16-21.
- In a study that controlled for different religious sensibilities, Coate and Grossman, found no statistically significant effect of price on consumption among 16-21 year olds. See “Effects of alcoholic beverage prices and legal drinking ages on youth alcohol use,” *Journal of Law & Economics* (1988).
- Multiple studies have recently confirmed that most teens that drink do not directly purchase alcohol. Rather, they acquire it at home or from parties, older siblings and friends. (National Academy of Sciences, 2004; Wagenaar, 1996). Thus, price plays no role in the case of most teenagers’ illegal consumption of alcohol.

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Practical experience also undermines the proposition that price level controls the level of abusive consumption. State and national trends show substantial progress in curbing abusive consumption in the past two decades as demonstrated by falling rates of illegal underage drinking and drunk driving. Most, if not all, of that progress has been due to factors other than alcohol price increases. In some instances, decreases in illegal underage drinking and drunk driving, among other measures of abusive consumption, have taken place at the same time that alcohol prices have dropped, either absolutely or relative to the consumer price index. While there is more work to be done to prevent abusive consumption, alcohol prices are not indicated as a way to make that progress.

However, Washington's alcohol regulatory provisions, including those that affect alcohol prices, are mechanisms which, in tandem, can help the State to maintain an orderly market in alcohol and therefore, indirectly, to promote responsible, lawful consumption.

- Washington State's Liquor Control Board articulated two characteristics of an orderly market in alcohol following the repeal of Prohibition. An orderly market would (1) prevent the redevelopment of tied-house arrangements and (2) abolish illicit manufacture, sale and smuggling of alcohol. *See* Message of Gov. Clarence D. Martin to the Legislature, Extraordinary Session, 1933-34 at 18; First Report of the Washington Liquor Control Board at 32 (1933). These goals are neither outdated nor unimportant.
- Various State laws and regulations, including pricing provisions, contribute to achieving an orderly market, by preventing the reemergence of tied house arrangements.
 - For example, the no-credit provision was expanded in the middle 1930's because even after Prohibition ended, "it became apparent . . . that many retail licensees were effectively 'controlled', contrary to the . . . Act, by the extension of excessive credits" by suppliers or wholesalers. Third Report to LCB at p. 21. To remedy this situation," the LCB enacted a ban on credit. The ban on credit is one valid mechanism for preventing the reoccurrence of tied houses.
 - Uniform pricing, enforced through price posting and bans on credit and volume discounts, removes the economic incentive for tied house arrangements and the means by which they can be profitable. Professor William Rorabaugh testified to this in *Costco v. Hoen*, Trial Transcript of March 22, 2006 at p. 43.
- These laws and regulations also discourage the development of illicit manufacture and illegal distribution channels for alcohol beverages.
 - For example, the concept of a minimum mark up was adopted to "fix [. . .] a happy medium in the selling price over the cost price," in order to curb "the activities of manufacturers and sellers of illicit liquor." First Report at p. 12. The idea was to ensure that wholesalers and retailers could make what was then considered a reasonable profit, so that they would be less likely to deal in illicit product.
 - The three-tier system generally, and the ban on central warehousing and retailer-to-retailer sales in particular, allow the State to monitor the movement of alcohol from producer to distributor to retailer. This allows the State to physically control the distribution of alcohol

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products and to minimize the chance of illegal diversion of volumes of alcohol beverages from the legal commercial distribution chain into unlicensed, illegal distribution.

- Laws and regulations that provide controlled access to alcohol beverages in an ordered marketplace diminish the level of illegal and abusive consumption both directly, by preventing retail sale to those falling into these categories and indirectly, by increasing the State's control over the flow of alcohol beverages within the State.

Recent events in New York and Illinois, among others, reflect that tied-house and other illicit relationships between manufacturers, wholesalers and retailers, are not simply an outdated, historic concern. In Illinois, a major retailer has recently been fined for setting up an alleged “dummy wholesaler,” including a separate warehouse, in order to be able to bypass the wholesale tier. In New York, a consent decree has recently been entered prohibiting wholesalers from violating tied-house, no-credit and other provisions and levying significant fines for past misconduct under the state's control statute.

2. What were the impacts on prices resulting from elimination of price posting in California and Oregon. (e.g., price wars) (Hellberg, Conway)

Neither state reports any discernable impact on prices as a result of the elimination of price posting.

3. What are the details of the Virginia lawsuit related to exclusive or preferential treatment? (K. Jacoy and Keiser)

The Virginia case referenced here is *Bolick v. Danielson*. This case has been in litigation for several years, and has at various times involved a number of pertinent issues related to the distribution and sale of beer and wine. Most of these issues have been resolved either legislatively or through the courts. The issue of the state selling only Virginia wine in the state liquor stores is one of only two remaining issues before the court. (The other issue has to do with the amount of liquor that can be transported across the state border.) The District Court has held that the Commonwealth is using state power to restrict consumer choice on the basis of the state of origin of the product. A decision from the 4th Circuit Court of Appeals is expected within the next month or so on the question of whether the state can choose to sell only wines produced in the state of Virginia in state liquor stores.

UPDATE: Since the last update, the 4th Circuit upheld a Virginia law limiting state-owned and -operated stores to marketing and selling only wine produced by Virginia farm wineries. (See Part IV of the majority opinion.)

Shelley Sieveking offered the following review of the opinion:

The Court of Appeals in the Brooks case ruled recently that Virginia has the power, under the Twenty-first Amendment, to enact non-discriminatory regulations of the import, distribution and consumption of alcohol within the state. The court agreed with the Supreme Court that the Commerce Clause cannot be interpreted to prevent states from enforcing state laws regulating alcohol, as long as those laws are not discriminatory. And even discriminatory laws can be enforced, if they advance legitimate state interests that cannot otherwise be adequately protected by reasonable, non-discriminatory alternatives. Since the laws and regulations that the LCB and the Task Force are examining now do not discriminate against out-of-state commercial interests, the

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Brooks case should encourage the State to avoid disrupting its own regulatory system, at least until the Costco litigation has had a chance to work its way through all possible appeals.

In addition to its general approach, the Brooks case is also interesting because it supports the notion that Washington, or any state that owns and operates state liquor stores, may legitimately choose to promote and/or sell only locally-produced beer and wine produced, without any violation of the Commerce Clause.

4. What has the state of New York's experience been with price posting? (Conway)

New York requires distributors to post their prices, and hold those prices for 1 month. Recent complaints from retailers that the posted prices were not always fully reflected in the listings provided to the retailers prompted the state's Attorney General to launch an extensive investigation. A representative from the state's alcohol beverage control agency reports that this investigation may result in legal action in the next couple of months.

Shelley Sieveking offered the following:

The State of New York has taken action against a group of wine, beer and spirits wholesalers to enforce the State's price posting, uniform pricing, and money's worth laws, and to enjoin a variety of wholesale practices, including requiring retailers to purchase certain brands in order to have access to other brands. Prices must be posted, accessible to all licensees, and must be the actual delivered prices to all retailers. Wholesalers must not provide discounts, rebates, or other payments directly to retailers, or pay for services and promotions the retailers would otherwise have to pay for. Pricing and packaging practices that result in some retailers obtaining product for a lower price than others are forbidden. Substantial fines were assessed for past violations, and a consent decree has been entered which enjoins specific wholesale practices.

5. How much money (state resources only) is appropriated toward alcohol treatment programs? (Curtis)

The LCB posed this question to the Department of Social and Health Services' Division of Alcohol and Substance Abuse (DASA), the state agency responsible for managing and tracking the state's alcohol and drug treatment programs. According to DASA, the very rough estimate of expenditures for alcohol treatment identified as the **primary** treatment is **\$11.3 million of General Fund** State. The estimated adult expenditures are \$7.6 million and the estimated youth expenditures are \$3.7 million.

DASA does not break out treatment expenditures by alcohol or chemical dependency treatment. Instead their reported estimated expenditure includes both types of treatment. The estimates provided above are based on alcohol as the primary treatment. The majority of DASA clients, however, list alcohol as a secondary or tertiary dependency and it would be very difficult to arrive at an estimate of what the expenditures for that treatment would be.

6. What would be the impact (if any) on state revenue if the mandatory mark-up was eliminated altogether (as opposed to cost plus a percentage)? (Curtis)

To answer this question, we asked the manufacturing and distributor representatives on the Three-Tier Task Force the following questions:

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Could help us respond to the following: "What would be the impact (if any) on state revenue if the mandatory mark-up was eliminated altogether (as opposed to cost plus a percentage)?" It would be helpful if you could provide some perspectives from your sector of the industry on this question. For example, from a manufacturer or distributor perspective, what would you expect to happen if the mandatory mark-up is eliminated? What are the average current mark-ups in your tier? How are markups generally determined? Would the average markups be affected? Under what circumstances would a manufacturer or distributor be likely to charge below the current mandatory markup? Are there other, more subtle considerations that would need to be taken into account?

We received the following response from **Katie Jacoy (California Wine Institute)**.

Wine Institute believes that the impact to state revenues would be minimal, if any. Gallonage taxes would NOT change, leaving the only possible impact being a reduction in revenue from sales tax. When considering a sales tax impact, you are only talking about approximately 8.8% of the price reduction to the consumer, if any. Most wineries currently charge above the minimum, as they are in the business of making profit. We believe that this would continue to be the case with most products if the mandatory minimum mark-up was eliminated. Wineries price their products to reach an on-the-shelf price point at which their wines can compete in the marketplace, except in specific circumstances discussed below. Wines are typically sold at the highest price the market will bear. (Wineries do not price based on a formula of cost plus X, making Washington's law focusing on the "cost of production" disconnected from the realities of the marketplace.)

Removing the mandatory minimum mark-ups would enable wineries to manage inventory better, for example it may allow a winery to offer reduced prices on an older vintage to make way for a new product line in the warehouse, or to run national specials on products. Washington consumers may be given choices that were previously not available to them because of the pricing law. There could be increased sales associated with such buying opportunities, offsetting a possible sales tax revenue decrease.

The vast majority of states have a robust regulated industry without mandatory minimum mark-up provisions, indicating that the industry and most states are comfortable to let the marketplace determine wine pricing.

7. Do any retailers currently offer wine/beer/spirits at cost plus 10% (as opposed to a higher percentage)? (Do any retailers already bottom-out at the lowest mandatory markup?) (Curtis)

To answer these questions, we posed the following to the retail representatives on the Task Force:

Do retailers currently offer wine and/or beer at cost plus 10% (as opposed to a higher percentage)? And, Do any retailers "bottom out" at the lowest mandatory markup? (Since retailers are not required to include a mandatory minimum mark up but are prohibited from selling below cost, this question translates into "do retailers sell wine and/or beer at or just above cost?") Can you share your experience with marking up beer and wine products? What is a typical or average markup? If your firm does sell product at cost, what percentage of your sales would be at this level and under what circumstances would you sell at cost (i.e., to clear out a product or to provide a loss leader).

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We received the following responses:

From Steve Lynn (Specialty Wine Shop Owner)

Let me give you some prices that are general for the wine retail industry (stand alone groups that have no ability to generate loss leaders).

Most distributors recommend a 43% markup on wine. You need to work through two typical numerical expressions: these are markup (43%) and margin (30%).

So if you take the wholesale price and divide by 0.7 you get a 30% margin which is equal to a 43% markup.

Most bottle shops are between 25% and 45% margin. Typically grocery stores are between 25% and 35%, but I would confirm this with a grocery chain or two.

A business making a 30% margin is a low margin and so volume has to be the driver. As an example, many gifts in gift stores have a margin of at least 50% to 100%, as do specialty foods.

So very rarely, a store might have a sale at 20% price reductions or more, but it all depended on the price they started at. If it was marked up 43% and then 20% off, it is still above 10%. If a store had the capability of running specials at less than purchase price, they would need a revenue source at a greater margin to be sure to be in a positive cash perspective.

You can see how price wars work then, you need to have other products you make more on so you can take less margin on the sale item.

Now a whole new issue comes up when an item goes on post off. When this happens, the distributor marks a product off and then that is the new wholesale price. Here is an example, a wine is going on post off, it is normally priced at \$15.29 wholesale and will now be dropped to \$10.49 on post off. The reason for the post off is a change in vintage is coming.

So if a retailer then applied a 43% markup it would typically retail for \$21.84. During the post off a 33% markup might be used to move the wine and then the margin is only 25% and the retail price is \$13.99. So the customer would see an approximate \$8.00 savings and the markup on the wine only changed 10%.

Post offs can be helpful if you don't own the wine at the higher price. If you already purchased or have remaining inventory, then the post off cuts into the markup/margin you expected to get for the wine if you pass the savings on to your customers. If you don't and you charge the same for the wine as you have in your inventory then you make a larger markup/margin on the wine purchased during a post off.

This also creates a situation where knowing when post offs are coming matters, as you can charge less than a competitor for the same wine. On the other hand, wines on post off are done typically because they are not moving as quickly as the distributor would like, and so doing business on post offs is not a strong business model, except as done in warehouse business.

Let me know if this helps.

From John McKay (Costco)

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From Costco's perspective we average just over 10% mark-up on beer and wine. Beer is typically sold below 10%, often in the 5% range. We will generally match the low seller in the market, and on beer this is generally around 5%. Local craft beers are more often sold with a 10-12% mark-up. Wine is generally in 10-13% mark up. This allows us to compete with grocers, at times however the market dictates lower pricing to be competitive. The other warehouse club competes vigorously and appears to be following a similar pricing model.

From Perry Park (Convenience Store Owner, KAGRO representative)

To answer your question regarding the markup on beer and wine, somewhere around 25%- 30% would be an average on most of them. But there would be an instances where you may overlook the price increase or decrease on some product in certain month, because the price has been the same for such a long time, you simply overlook or doesn't check the price. In these cases, I have had some wine margined at or around 10%, but these do not happen very often.

On the other hand, I have had wines and beer above 30% margin as well for the same reasons indicated above.

I believe if you take advantage of the post off pricing, you manage your margins better, and it works better to stabilize the pricing market for the consumers. Small C- stores have to rely on good margins and convenience for the customers because we cannot compete with big chain stores on volumes.

As far as clearing out the slow products at low margin, It does happen from time to time but not enough to really impact your cost margin. Again we're looking for margin rather than volume.

8. Minimum mark ups in other states (Conway)

Of the 17 states responding to the survey, two states (other than Washington) report requiring a minimum mandatory markup. Utah (a control state) reported a 64.5% markup by the state for all products it sells to retailers and consumers (distilled spirits, heavy beer and wine); and Wyoming (also a control state) reported a 17.5% markup for wine and spirits only.

9. What do other control states do related to selling beer and wine? (Conway)

See the results of the Survey of States: State Regulations Related to the Distribution and Sale of Beer and Wine.

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10. How do sales of fortified wine and strong beer in private retail outlets compare with sales of those products in state liquor stores? [Curtis]

The LCB provided the following information comparing the sales of fortified wines as a percentage of all wines sold in private retail and state liquor store outlets. Similar comparative data is not available for strong beer.

Relationship- Wine Sales-14+% alch vs 14% and lower

Private Retailers-3 year history

Liter Tax Reports	
Wine 14 % and Under vs 14%+	Relationship
FY 05	5.7%
FY 04	4.8%
FY 03	4.0%

LCB State Liquor Store Statistics -- 3 year History

Based on single month case sales	
Wine 14% and Under vs 14%+	Relationship
Jun-06	7.9%
Dec-05	9.0%
Jun-05	7.7%
Dec-04	7.8%

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11. Please provide Washington data for past 10 years on beer and wine sales and market share, including Washington wine/beer vs. other manufacturers? (Conway)

The first two charts below provide information about the LCB's sales of wine and beer over the past 10 years. Sales data are reported as total dollars sold, the number of cases sold, and the LCB's total share of the wine sale market by year.

The third chart (on the following page) shows breaks out total wine sales by sales of Washington wines, and sales of wine produced outside of Washington, by retail outlet type.

LCB SALES/ WINE AND BEER

Wine Sales FY '96-'06			
	Dollar Sales	Case Sales	Market Share
FY 1996	\$19,512,851	396,862	7.9%
FY 1997	\$24,499,859	499,454	9.8%
FY 1998	\$29,349,252	552,545	10.4%
FY 1999	\$32,896,374	592,774	11.0%
FY 2000	\$35,872,800	589,878	10.3%
FY 2001	\$36,802,779	578,344	9.6%
FY 2002	\$38,039,620	593,220	9.8%
FY 2003	\$39,045,711	606,779	9.0%
FY 2004	\$38,144,333	591,391	8.3%
FY 2005	\$38,891,883	590,576	8.2%
FY 2006	\$36,542,280	513,217	7% *

* YTD through May

Beer Sales FY '96-'06			
	Dollar Sales	Case Sales	Market Share
FY 1996	\$1,219,414	72,614	0.169%
FY 1997	\$1,221,711	71,121	0.158%
FY 1998	\$1,177,735	63,734	0.140%
FY 1999	\$1,140,694	58,808	0.128%
FY 2000	\$689,484	34,036	0.071%
FY 2001	\$760,228	37,121	0.076%
FY 2002	\$807,032	36,675	0.081%
FY 2003	\$814,048	36,623	0.075%
FY 2004	\$920,190	38,219	0.074%
FY 2005	\$884,353	36,794	0.074%
FY 2006	\$717,020	26,296	Available Sept

Source: WSLCB

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Percent of Washington Wine Sales by Retail Channel					
Channel:		WA Produced Wine		Wine Produced Outside WA	
		Dollars	Cases	Dollars	Cases
	LCB *	35.6%	29.7%	64.4%	70.3%
	Grocery **	25.0%	17.0%	75.0%	83.0%
	Drug ***	18.0%	15.0%	82.0%	85.0%
	Mass (e.g. Target) **	24.0%	16.0%	76.0%	84.0%
	Club **	28.0%	17.0%	72.0%	83.0%
* LCB Wine Sales for July 2006					
** SMWE					
*** SMWE Estimates					

SMWE – Ste. Michelle Wine Estates

Source: WSLCB

12. Can state stores favor in-state products? (Keiser)

According to the LCB, from a retail perspective, the state can employ a marketing strategy that favors in-state products as a response to customer demand, as long as it does not discriminate against out of state products. Discrimination against out of state products is constitutionally suspect and open to legal challenge.

13. What percentage of Washington wines sold in state liquor stores comes from new wineries? (S. Lynn)

There were 357 in-state wineries at the end of fiscal year 2005 (June 30, 2005). LCB liquor stores have carried products from 117 in-state wineries. Of these 117 wineries, more than 60% had been issued their license in the past six years (FY 05 and sooner). (Data provided by LCB.)

14. Please provide information on states' costs associated with abuse (Sullivan)

In 1999, the Division of Alcohol and Substance Abuse commissioned a study to provide this information. According to the results of that study, in 1996, the economic cost of alcohol abuse was approximately \$1.47 billion. (Estimated at 59% of the total economic cost of drug and alcohol abuse of \$2.54 billion.) Although Dr. Wickizer's study did not separate the alcohol abuse costs from drug abuse at a more detailed level, applying the 59% metric, the costs would have been as follows:

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ECONOMIC COSTS ASSOCIATED WITH ALCOHOL ABUSE IN WASHINGTON STATE, 1996

Cost Category	Total Cost	Amount attributable to Alcohol Abuse (59%)
Mortality	\$929 million	\$548 million
Crime	\$541 million	\$319 million
Morbidity	\$369 million	\$217 million
Other related costs	\$254 million	\$149 million
Medical Care	\$211 million	\$124 million
Other diseases	\$81 million	\$47 million
Treatment	\$160 million	\$94 million

Source: Derived from "The Economic Costs of Drug and Alcohol Abuse in Washington State, 1996". Prepared for Division of Alcohol and Substance Abuse, Department of Social and Health Services, 1999.

According to Dr. Wickizer, this study will be updated this fall, providing much more reliable and current information.

15. Please provide data regarding the sale of beer in state liquor stores by (quantity and dollar volume.) (Conway)

BEER SALES IN STATE LIQUOR STORES FY'96 to '06		
Fiscal Year	Dollar Sales	Case Sales
1996	\$1,219,414	72,614
1997	\$1,221,711	71,121
1998	\$1,177,735	63,734
1999	\$1,140,694	58,808
2000	\$689,484	34,036
2001	\$760,228	37,121
2002	\$807,032	36,675
2003	\$814,048	36,623
2004	\$920,190	38,219
2005	\$884,353	36,794
2006	\$717,020	26,296

Source: LCB, 8/18/06

16. Please provide data on enforcement/arrests for violations in state stores vs. private retailers. (Keiser)

The following data was provided by the LCB:

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The compliance rate for all liquor stores (January – June 2006) was 81% (85% for LCB state-run stores and 73% for contract stores).

The compliance rate for private retailers (12-month rolling average ending June 2006) is 84.2%.

**17. Please provide a breakout of beer/wine revenue and taxes – where do they go?
(Keiser/Conway)**

The link below connects to an LCB brochure that describes how liquor revenues (including beer and wine) are distributed in Washington.

http://www.liq.wa.gov/publications/2006_Brochure.pdf

18. Please provide state-by-state information on beer and wine consumption rates. (T. Carr)

Tom Carr provided this link to the National Institute of Alcohol Abuse and Alcoholism (NIAAA) database. This provides a state-by-state comparison of per capita consumption rates from 1970 to 2003. In addition to overall consumption rates, consumption rates are provided for beer, wine, and distilled spirits.

<http://www.niaaa.nih.gov/Resources/DatabaseResources/QuickFacts/AlcoholSales/consum03.htm>

Note: For ease of review, we have extracted the consumption rates for all states for just 2003 (the most recent data provided). This chart is provided in a separate document.

**19. What has been the impact on state *revenues* (not sales) since 2005 wine markup to 43%?
(Keiser) Information unavailable.**

**20. What would be the impact on Washington wine/wineries if LCB does not sell wine?
(Conway) Information unavailable.**

**21. How much money does the state receive from sales tax on liquor (wine/beer/spirits)?
(Curtis) Information unavailable.**

PER CAPITA 2003 CONSUMPTION RATES - Alphabetical Sort

<http://www.niaaa.nih.gov/Resources/DatabaseResources/QuickFacts/AlcoholSales/consum03.htm>

Per capita alcohol consumption, based on alcohol sales data

Per capita ethanol consumption for States, census regions, and the United States, 2003. (Gallons of ethanol, based on population age 14 and older)

State or other geographic area (control states shaded in green)	Per capita consumption (2003)				Per Capita Consumption Standing (1 highest/ 50 lowest)		
	Beer	Wine	Spirits	All beverages	Beer	Wine	All
Alabama	1.18	0.19	0.52	1.89	33	38	45
Alaska	1.27	0.37	0.79	2.43	24	19	13
Arizona	1.41	0.37	0.71	2.48	13	18	11
Arkansas	1.06	0.14	0.56	1.76	42	47	47
California	1.06	0.50	0.65	2.22	41	9	29
Colorado	1.34	0.40	0.87	2.60	18	15	7
Connecticut	0.93	0.52	0.77	2.22	48	6	28
Delaware	1.37	0.56	1.17	3.11	16	4	3
Florida	1.32	0.44	0.86	2.63	22	13	6
Georgia	1.19	0.26	0.66	2.11	32	28	36
Hawaii	1.30	0.42	0.67	2.39	23	14	18
Idaho	1.14	0.64	0.54	2.33	36	2	24
Illinois	1.25	0.35	0.74	2.34	26	21	23
Indiana	1.11	0.21	0.64	1.96	39	37	41
Iowa	1.37	0.15	0.53	2.05	17	44	37
Kansas	1.15	0.17	0.56	1.88	35	42	46
Kentucky	1.03	0.15	0.56	1.74	45	45	48
Louisiana	1.42	0.25	0.73	2.39	11	30	19
Maine	1.24	0.39	0.73	2.36	27	17	20
Maryland	1.02	0.32	0.77	2.11	46	23	35
Massachusetts	1.10	0.56	0.82	2.48	40	5	10
Michigan	1.17	0.26	0.70	2.13	34	29	34
Minnesota	1.21	0.29	0.90	2.41	29	25	15
Mississippi	1.40	0.12	0.62	2.14	14	49	33
Missouri	1.33	0.25	0.68	2.26	19	31	25
Montana	1.55	0.33	0.72	2.59	4	22	8
Nebraska	1.42	0.18	0.63	2.23	12	39	27
Nevada	1.76	0.62	1.25	3.63	1	3	2
New Hampshire	1.72	0.70	1.61	4.03	2	1	1
New Jersey	0.95	0.50	0.79	2.24	47	10	26
New Mexico	1.52	0.27	0.61	2.40	7	26	16
New York	0.93	0.40	0.61	1.93	49	16	43
North Carolina	1.21	0.27	0.52	2.00	30	27	40
North Dakota	1.53	0.17	0.86	2.56	5	41	9
Ohio	1.33	0.22	0.48	2.03	20	36	39
Oklahoma	1.06	0.13	0.73	1.93	43	48	44
Oregon	1.20	0.47	0.68	2.35	31	11	21
Pennsylvania	1.46	0.23	0.51	2.20	9	33	30
Rhode Island	1.12	0.51	0.79	2.42	38	8	14
South Carolina	1.38	0.23	0.74	2.35	15	35	22
South Dakota	1.51	0.16	0.73	2.40	8	43	17
Tennessee	1.26	0.18	0.52	1.96	25	40	42
Texas	1.46	0.23	0.51	2.19	10	34	32
Utah	0.77	0.15	0.39	1.31	50	46	50
Vermont	1.32	0.51	0.64	2.47	21	7	12
Virginia	1.14	0.36	0.53	2.03	37	20	38
Washington	1.05	0.46	0.67	2.19	44	12	31
West Virginia	1.23	0.10	0.38	1.71	28	50	49
Wisconsin	1.52	0.29	1.00	2.81	6	24	5
Wyoming	1.69	0.23	0.90	2.82	3	32	4

Sources: Alcohol Epidemiologic Data System. Lakins, N.E.; Williams, G.D.; Yi, H.; and Hilton, M.E. Surveillance Report #73: Apparent Per Capita Alcohol Consumption: National, State, and Regional Trends, 1970–2003. Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, Division of Epidemiology and Prevention Research (August 2005).

PER CAPITA 2003 CONSUMPTION RATES - ALL BEVERAGES

<http://www.niaaa.nih.gov/Resources/DatabaseResources/QuickFacts/AlcoholSales/consum03.htm>

Per capita alcohol consumption, based on alcohol sales data

Per capita ethanol consumption for States, census regions, and the United States, 2003. (Gallons of ethanol, based on population age 14 and older)

Sort by ALL Beverages - Highest to Lowest Consumption (2003)

Washington is ranked at 31 of 50

State or other geographic area (control states shaded in green)	Per capita consumption				Per Capita Consumption Standing (1 highest/ 50 lowest)		
	Beer	Wine	Spirits	All beverages	Beer	Wine	All
New Hampshire	1.72	0.70	1.61	4.03	2	1	1
Nevada	1.76	0.62	1.25	3.63	1	3	2
Delaware	1.37	0.56	1.17	3.11	16	4	3
Wyoming	1.69	0.23	0.90	2.82	3	32	4
Wisconsin	1.52	0.29	1.00	2.81	6	24	5
Florida	1.32	0.44	0.86	2.63	22	13	6
Colorado	1.34	0.40	0.87	2.60	18	15	7
Montana	1.55	0.33	0.72	2.59	4	22	8
North Dakota	1.53	0.17	0.86	2.56	5	41	9
Massachusetts	1.10	0.56	0.82	2.48	40	5	10
Arizona	1.41	0.37	0.71	2.48	13	18	11
Vermont	1.32	0.51	0.64	2.47	21	7	12
Alaska	1.27	0.37	0.79	2.43	24	19	13
Rhode Island	1.12	0.51	0.79	2.42	38	8	14
Minnesota	1.21	0.29	0.90	2.41	29	25	15
New Mexico	1.52	0.27	0.61	2.40	7	26	16
South Dakota	1.51	0.16	0.73	2.40	8	43	17
Hawaii	1.30	0.42	0.67	2.39	23	14	18
Louisiana	1.42	0.25	0.73	2.39	11	30	19
Maine	1.24	0.39	0.73	2.36	27	17	20
Oregon	1.20	0.47	0.68	2.35	31	11	21
South Carolina	1.38	0.23	0.74	2.35	15	35	22
Illinois	1.25	0.35	0.74	2.34	26	21	23
Idaho	1.14	0.64	0.54	2.33	36	2	24
Missouri	1.33	0.25	0.68	2.26	19	31	25
New Jersey	0.95	0.50	0.79	2.24	47	10	26
Nebraska	1.42	0.18	0.63	2.23	12	39	27
Connecticut	0.93	0.52	0.77	2.22	48	6	28
California	1.06	0.50	0.65	2.22	41	9	29
Pennsylvania	1.46	0.23	0.51	2.20	9	33	30
Washington	1.05	0.46	0.67	2.19	44	12	31
Texas	1.46	0.23	0.51	2.19	10	34	32
Mississippi	1.40	0.12	0.62	2.14	14	49	33
Michigan	1.17	0.26	0.70	2.13	34	29	34
Maryland	1.02	0.32	0.77	2.11	46	23	35
Georgia	1.19	0.26	0.66	2.11	32	28	36
Iowa	1.37	0.15	0.53	2.05	17	44	37
Virginia	1.14	0.36	0.53	2.03	37	20	38
Ohio	1.33	0.22	0.48	2.03	20	36	39
North Carolina	1.21	0.27	0.52	2.00	30	27	40
Indiana	1.11	0.21	0.64	1.96	39	37	41
Tennessee	1.26	0.18	0.52	1.96	25	40	42
New York	0.93	0.40	0.61	1.93	49	16	43
Oklahoma	1.06	0.13	0.73	1.93	43	48	44
Alabama	1.18	0.19	0.52	1.89	33	38	45
Kansas	1.15	0.17	0.56	1.88	35	42	46
Arkansas	1.06	0.14	0.56	1.76	42	47	47
Kentucky	1.03	0.15	0.56	1.74	45	45	48
West Virginia	1.23	0.10	0.38	1.71	28	50	49
Utah	0.77	0.15	0.39	1.31	50	46	50

Beer Consumption

PER CAPITA 2003 CONSUMPTION RATES - BEER

<http://www.niaaa.nih.gov/Resources/DatabaseResources/QuickFacts/AlcoholSales/consum03.htm>

Per capita alcohol consumption, based on alcohol sales data

Per capita ethanol consumption for States, census regions, and the United States, 2003. (Gallons of ethanol, based on population age 14 and older)

Sort by BEER Consumption (2003) - Highest to Lowest Consumption

Washington is ranked at 44 of 50

State or other geographic area (control states shaded in green)	Per capita consumption				Per Capita Consumption Standing (1 highest/ 50 lowest)		
	Beer	Wine	Spirits	All beverages	Beer	Wine	All
Nevada	1.76	0.62	1.25	3.63	1	3	2
New Hampshire	1.72	0.70	1.61	4.03	2	1	1
Wyoming	1.69	0.23	0.90	2.82	3	32	4
Montana	1.55	0.33	0.72	2.59	4	22	8
North Dakota	1.53	0.17	0.86	2.56	5	41	9
Wisconsin	1.52	0.29	1.00	2.81	6	24	5
New Mexico	1.52	0.27	0.61	2.40	7	26	16
South Dakota	1.51	0.16	0.73	2.40	8	43	17
Pennsylvania	1.46	0.23	0.51	2.20	9	33	30
Texas	1.46	0.23	0.51	2.19	10	34	32
Louisiana	1.42	0.25	0.73	2.39	11	30	19
Nebraska	1.42	0.18	0.63	2.23	12	39	27
Arizona	1.41	0.37	0.71	2.48	13	18	11
Mississippi	1.40	0.12	0.62	2.14	14	49	33
South Carolina	1.38	0.23	0.74	2.35	15	35	22
Delaware	1.37	0.56	1.17	3.11	16	4	3
Iowa	1.37	0.15	0.53	2.05	17	44	37
Colorado	1.34	0.40	0.87	2.60	18	15	7
Missouri	1.33	0.25	0.68	2.26	19	31	25
Ohio	1.33	0.22	0.48	2.03	20	36	39
Vermont	1.32	0.51	0.64	2.47	21	7	12
Florida	1.32	0.44	0.86	2.63	22	13	6
Hawaii	1.30	0.42	0.67	2.39	23	14	18
Alaska	1.27	0.37	0.79	2.43	24	19	13
Tennessee	1.26	0.18	0.52	1.96	25	40	42
Illinois	1.25	0.35	0.74	2.34	26	21	23
Maine	1.24	0.39	0.73	2.36	27	17	20
West Virginia	1.23	0.10	0.38	1.71	28	50	49
Minnesota	1.21	0.29	0.90	2.41	29	25	15
North Carolina	1.21	0.27	0.52	2.00	30	27	40
Oregon	1.20	0.47	0.68	2.35	31	11	21
Georgia	1.19	0.26	0.66	2.11	32	28	36
Alabama	1.18	0.19	0.52	1.89	33	38	45
Michigan	1.17	0.26	0.70	2.13	34	29	34
Kansas	1.15	0.17	0.56	1.88	35	42	46
Idaho	1.14	0.64	0.54	2.33	36	2	24
Virginia	1.14	0.36	0.53	2.03	37	20	38
Rhode Island	1.12	0.51	0.79	2.42	38	8	14
Indiana	1.11	0.21	0.64	1.96	39	37	41
Massachusetts	1.10	0.56	0.82	2.48	40	5	10
California	1.06	0.50	0.65	2.22	41	9	29
Arkansas	1.06	0.14	0.56	1.76	42	47	47
Oklahoma	1.06	0.13	0.73	1.93	43	48	44
Washington	1.05	0.46	0.67	2.19	44	12	31
Kentucky	1.03	0.15	0.56	1.74	45	45	48
Maryland	1.02	0.32	0.77	2.11	46	23	35
New Jersey	0.95	0.50	0.79	2.24	47	10	26
Connecticut	0.93	0.52	0.77	2.22	48	6	28
New York	0.93	0.40	0.61	1.93	49	16	43
Utah	0.77	0.15	0.39	1.31	50	46	50

Wine Consumption

PER CAPITA 2003 CONSUMPTION RATES - WINE

<http://www.niaaa.nih.gov/Resources/DatabaseResources/QuickFacts/AlcoholSales/consum03.htm>

Per capita alcohol consumption, based on alcohol sales data

Per capita ethanol consumption for States, census regions, and the United States, 2003. (Gallons of ethanol, based on population age 14 and older)

Sort by WINE Consumption (2003) - Highest to Lowest Washington is ranked at 12 of 50

State or other geographic area (control states shaded in green)	Per capita consumption				Per Capita Consumption Standing (1 highest/ 50 lowest)		
	Beer	Wine	Spirits	All beverages	Beer	Wine	All
New Hampshire	1.72	0.70	1.61	4.03	2	1	1
Idaho	1.14	0.64	0.54	2.33	36	2	24
Nevada	1.76	0.62	1.25	3.63	1	3	2
Delaware	1.37	0.56	1.17	3.11	16	4	3
Massachusetts	1.10	0.56	0.82	2.48	40	5	10
Connecticut	0.93	0.52	0.77	2.22	48	6	28
Vermont	1.32	0.51	0.64	2.47	21	7	12
Rhode Island	1.12	0.51	0.79	2.42	38	8	14
California	1.06	0.50	0.65	2.22	41	9	29
New Jersey	0.95	0.50	0.79	2.24	47	10	26
Oregon	1.20	0.47	0.68	2.35	31	11	21
Washington	1.05	0.46	0.67	2.19	44	12	31
Florida	1.32	0.44	0.86	2.63	22	13	6
Hawaii	1.30	0.42	0.67	2.39	23	14	18
Colorado	1.34	0.40	0.87	2.60	18	15	7
New York	0.93	0.40	0.61	1.93	49	16	43
Maine	1.24	0.39	0.73	2.36	27	17	20
Arizona	1.41	0.37	0.71	2.48	13	18	11
Alaska	1.27	0.37	0.79	2.43	24	19	13
Virginia	1.14	0.36	0.53	2.03	37	20	38
Illinois	1.25	0.35	0.74	2.34	26	21	23
Montana	1.55	0.33	0.72	2.59	4	22	8
Maryland	1.02	0.32	0.77	2.11	46	23	35
Wisconsin	1.52	0.29	1.00	2.81	6	24	5
Minnesota	1.21	0.29	0.90	2.41	29	25	15
New Mexico	1.52	0.27	0.61	2.40	7	26	16
North Carolina	1.21	0.27	0.52	2.00	30	27	40
Georgia	1.19	0.26	0.66	2.11	32	28	36
Michigan	1.17	0.26	0.70	2.13	34	29	34
Louisiana	1.42	0.25	0.73	2.39	11	30	19
Missouri	1.33	0.25	0.68	2.26	19	31	25
Wyoming	1.69	0.23	0.90	2.82	3	32	4
Pennsylvania	1.46	0.23	0.51	2.20	9	33	30
Texas	1.46	0.23	0.51	2.19	10	34	32
South Carolina	1.38	0.23	0.74	2.35	15	35	22
Ohio	1.33	0.22	0.48	2.03	20	36	39
Indiana	1.11	0.21	0.64	1.96	39	37	41
Alabama	1.18	0.19	0.52	1.89	33	38	45
Nebraska	1.42	0.18	0.63	2.23	12	39	27
Tennessee	1.26	0.18	0.52	1.96	25	40	42
North Dakota	1.53	0.17	0.86	2.56	5	41	9
Kansas	1.15	0.17	0.56	1.88	35	42	46
South Dakota	1.51	0.16	0.73	2.40	8	43	17
Iowa	1.37	0.15	0.53	2.05	17	44	37
Kentucky	1.03	0.15	0.56	1.74	45	45	48
Utah	0.77	0.15	0.39	1.31	50	46	50
Arkansas	1.06	0.14	0.56	1.76	42	47	47
Oklahoma	1.06	0.13	0.73	1.93	43	48	44
Mississippi	1.40	0.12	0.62	2.14	14	49	33
West Virginia	1.23	0.10	0.38	1.71	28	50	49

Sort by BEER PRODUCTION (2005) - Highest to Lowest
Production
Washington is ranked at 3 of 50

State or other geographic area (control states shaded in green)	Per Capita Consumption (2003) Standing (1 highest/ 50 lowest)		
	Beer	Wine	All
California	41	9	29
Colorado	18	15	7
Texas	10	34	32
Ohio	20	36	39
Virginia	37	20	38
Missouri	19	31	25
Georgia	32	28	36
Florida	22	13	6
Wisconsin	6	24	5
New York	49	16	43
New Jersey	47	10	26
North Carolina	30	27	40
Pennsylvania	9	33	30
New Hampshire	2	1	1
Oregon	31	11	21
Washington	44	12	31
Minnesota	29	25	15
Indiana	39	37	41
Vermont	21	7	12
Kentucky	45	45	48
Massachusetts	40	5	10
Alaska	24	19	13
Michigan	34	29	34
Maine	27	17	20
Maryland	46	23	35
Montana	4	22	8
Arizona	13	18	11
Louisiana	11	30	19
Nevada	1	3	2
Nebraska	12	39	27
New Mexico	7	26	16
Hawaii	23	14	18
Idaho	36	2	24
Iowa	17	44	37
Connecticut	48	6	28
Kansas	35	42	46
South Carolina	15	35	22
Wyoming	3	32	4
Delaware	16	4	3
Rhode Island	38	8	14
South Dakota	8	43	17
Tennessee	25	40	42
Illinois	26	21	23
Arkansas	42	47	47
West Virginia	28	50	49
Mississippi	14	49	33
Alabama	33	38	45
North Dakota	5	41	9
Oklahoma	43	48	44
Utah	50	46	50

Wine production/gallons. July 2004 - June 2005. From www.wineamerica.org /newsroom/data.htm		
WINE PRODUCTION	Rank	
568,628,053	90.22%	1
114,496	0.02%	24
955,187	0.15%	9
857,339	0.14%	10
717,345	0.11%	14
852,668	0.14%	11
134,585	0.02%	22
1,410,270	0.22%	6
375,064	0.06%	19
29,011,382	4.60%	2
1,602,684	0.25%	5
736,394	0.12%	13
568,249	0.09%	15
0	0.00%	
1,996,342	0.32%	4
16,514,248	2.62%	3
0	0.00%	
436,934	0.07%	18
1,185,013	0.19%	8
1,238,261	0.20%	7
39,570	0.01%	28
0	0.00%	
808,093	0.13%	12
13,381	0.00%	32
144,667	0.02%	20
0	0.00%	
21,143	0.00%	31
0	0.00%	
0	0.00%	
0	0.00%	
548,610	0.09%	16
0	0.00%	
510,077	0.08%	17
52,838	0.01%	25
50,681	0.01%	27
0	0.00%	
10,025	0.00%	34
0	0.00%	
0	0.00%	
33,901	0.01%	29
0	0.00%	
143,660	0.02%	21
118,553	0.02%	23
52,800	0.01%	26
30,440	0.00%	30
12,987	0.00%	33
125	0.00%	35
0	0.00%	
0	0.00%	
0	0.00%	

Beer production/gallons 2005. From www.beerinstitute.org /statistics.asp	
BEER Production	Rank
21,931,802	1
21,077,114	2
19,382,482	3
19,002,543	4
14,595,558	5
14,000,000	6
13,000,000	7
8,972,331	8
8,912,189	9
8,021,559	10
7,000,000	11
6,000,000	12
3,257,410	13
3,000,000	14
641,741	15
248,200	16
208,724	17
191,194	18
179,387	19
117,786	20
113,477	21
113,023	22
90,128	23
85,133	24
52,031	25
50,385	26
27,861	27
17,863	28
8,937	29
8,303	30
7,765	31
7,260	32
6,938	33
5,706	34
4,645	35
4,484	36
4,414	37
4,224	38
1,702	39
1,289	40
84	41
NO INFO	
NA	
NO INFO	
NA	
NO INFO	
NA	
NA	
NO INFO	
NO INFO	

State or other geographic area (control states shaded in green)	Per Capita Consumption (2003) Standing (1 highest/ 50 lowest)		
	Beer	Wine	All
California	41	9	29
New York	49	16	43
Washington	44	12	31
Oregon	31	11	21
New Jersey	47	10	26
Florida	22	13	6
Kentucky	45	45	48
Vermont	21	7	12
Texas	10	34	32
Ohio	20	36	39
Missouri	19	31	25
Michigan	34	29	34
North Carolina	30	27	40
Virginia	37	20	38
Pennsylvania	9	33	30
New Mexico	7	26	16
Idaho	36	2	24
Indiana	39	37	41
Wisconsin	6	24	5
Maryland	46	23	35
Tennessee	25	40	42
Georgia	32	28	36
Illinois	26	21	23
Colorado	18	15	7
Iowa	17	44	37
Arkansas	42	47	47
Connecticut	48	6	28
Massachusetts	40	5	10
Rhode Island	38	8	14
West Virginia	28	50	49
Arizona	13	18	11
Maine	27	17	20
Mississippi	14	49	33
South Carolina	15	35	22
Alabama	33	38	45
New Hampshire	2	1	1
Minnesota	29	25	15
Alaska	24	19	13
Montana	4	22	8
Louisiana	11	30	19
Nevada	1	3	2
Nebraska	12	39	27
Hawaii	23	14	18
Kansas	35	42	46
Wyoming	3	32	4
Delaware	16	4	3
South Dakota	8	43	17
North Dakota	5	41	9
Oklahoma	43	48	44
Utah	50	46	50

Beer production/gallons 2005. From www.beerinstitute.org /statistics.asp	
BEER Production	Rank
21,931,802	1
8,021,559	10
248,200	16
641,741	15
7,000,000	11
8,972,331	8
117,786	20
179,387	19
19,382,482	3
19,002,543	4
14,000,000	6
90,128	23
6,000,000	12
14,595,558	5
3,257,410	13
7,765	31
6,938	33
191,194	18
8,912,189	9
52,031	25
NO INFO	
13,000,000	7
NA	
21,077,114	2
5,706	34
NO INFO	
4,645	35
113,477	21
1,289	40
NA	
27,861	27
85,133	24
NO INFO	
4,414	37
NA	
3,000,000	14
208,724	17
113,023	22
50,385	26
17,863	28
8,937	29
8,303	30
7,260	32
4,484	36
4,224	38
1,702	39
84	41
NA	
NO INFO	
NO INFO	

Alcohol Dependency 2000-2001

PER CAPITA 2003 CONSUMPTION RATES

<http://www.niaaa.nih.gov/Resources/DatabaseResources/QuickFacts/AlcoholSales/consum03.htm>

Per capita alcohol consumption, based on alcohol sales data

Per capita ethanol consumption for States, census regions, and the United States, 2003. (Gallons of

State or other geographic area (control states shaded in green)	Per capita consumption (2003)				Per Capita Consumption Standing (1 highest/ 50 lowest)		
	Beer	Wine	Spirits	All beverages	Beer	Wine	All
Louisiana	1.42	0.25	0.73	2.39	11	30	19
New Mexico	1.52	0.27	0.61	2.40	7	26	16
Mississippi	1.40	0.12	0.62	2.14	14	49	33
South Dakota	1.51	0.16	0.73	2.40	8	43	17
Alaska	1.27	0.37	0.79	2.43	24	19	13
Oklahoma	1.06	0.13	0.73	1.93	43	48	44
California	1.06	0.50	0.65	2.22	41	9	29
Illinois	1.25	0.35	0.74	2.34	26	21	23
Oregon	1.20	0.47	0.68	2.35	31	11	21
Montana	1.55	0.33	0.72	2.59	4	22	8
North Dakota	1.53	0.17	0.86	2.56	5	41	9
Arizona	1.41	0.37	0.71	2.48	13	18	11
Idaho	1.14	0.64	0.54	2.33	36	2	24
Vermont	1.32	0.51	0.64	2.47	21	7	12
Colorado	1.34	0.40	0.87	2.60	18	15	7
Nebraska	1.42	0.18	0.63	2.23	12	39	27
Massachusetts	1.10	0.56	0.82	2.48	40	5	10
Minnesota	1.21	0.29	0.90	2.41	29	25	15
Washington	1.05	0.46	0.67	2.19	44	12	31
Wyoming	1.69	0.23	0.90	2.82	3	32	4
Delaware	1.37	0.56	1.17	3.11	16	4	3
Iowa	1.37	0.15	0.53	2.05	17	44	37
Rhode Island	1.12	0.51	0.79	2.42	38	8	14
Alabama	1.18	0.19	0.52	1.89	33	38	45
Connecticut	0.93	0.52	0.77	2.22	48	6	28
Michigan	1.17	0.26	0.70	2.13	34	29	34
Tennessee	1.26	0.18	0.52	1.96	25	40	42
Georgia	1.19	0.26	0.66	2.11	32	28	36
Arkansas	1.06	0.14	0.56	1.76	42	47	47
Nevada	1.76	0.62	1.25	3.63	1	3	2
West Virginia	1.23	0.10	0.38	1.71	28	50	49
Utah	0.77	0.15	0.39	1.31	50	46	50
Pennsylvania	1.46	0.23	0.51	2.20	9	33	30
New Hampshire	1.72	0.70	1.61	4.03	2	1	1
South Carolina	1.38	0.23	0.74	2.35	15	35	22
Florida	1.32	0.44	0.86	2.63	22	13	6
Texas	1.46	0.23	0.51	2.19	10	34	32
New York	0.93	0.40	0.61	1.93	49	16	43
Maine	1.24	0.39	0.73	2.36	27	17	20
North Carolina	1.21	0.27	0.52	2.00	30	27	40
Kentucky	1.03	0.15	0.56	1.74	45	45	48
Missouri	1.33	0.25	0.68	2.26	19	31	25
Wisconsin	1.52	0.29	1.00	2.81	6	24	5
Hawaii	1.30	0.42	0.67	2.39	23	14	18
Ohio	1.33	0.22	0.48	2.03	20	36	39
Indiana	1.11	0.21	0.64	1.96	39	37	41
Kansas	1.15	0.17	0.56	1.88	35	42	46
Maryland	1.02	0.32	0.77	2.11	46	23	35
Virginia	1.14	0.36	0.53	2.03	37	20	38
New Jersey	0.95	0.50	0.79	2.24	47	10	26

Sources: Alcohol Epidemiologic Data System. Lakins, N.E.; Williams, G.D.; Yi, H.; and Hilton, M.E. Surveillance Report #73: Apparent Per Capita Alcohol

Consumption: National, State, and Regional Trends, 1970–2003. Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, Division of Epidemiology and Prevention Research (August 2005).

Alcohol Epidemiologic Data System. Nephew, T.M., Yi, H., Williams, G.D., Stinson, F.S., and Dufour, M.C. U.S. Alcohol Epidemiologic Data Reference Manual, Vol. 1, 4th ed. U.S. Apparent Consumption of Alcoholic Beverages Based on State Sales, Taxation, or Receipt Data. Washington, DC: NIAAA. NIH Publication No. 04-5563 (June 2004).

Table B.14 Percentages Reporting Past Year Alcohol Dependence, by Age Group and State: Annual Averages Based on 2000 and 2001 NHSDAs

Total	AGE GROUP (Years)		
	12–17	18–25	26 or Older
Estimate	Estimate	Estimate	Estimate
2.85	2.76	5.83	2.27
2.84	2.96	6.12	2.2
2.81	1.93	4.84	2.55
2.73	3.01	7	1.86
2.69	2.86	5.18	2.13
2.65	1.98	5.57	2.22
2.63	1.75	4.9	2.33
2.6	1.59	6.23	2.12
2.59	2.22	5.49	2.17
2.57	2.62	7.94	1.63
2.57	2.71	6.75	1.74
2.55	2.47	4.78	2.16
2.55	2.09	5.94	1.91
2.55	2.1	6.54	1.97
2.54	2.01	5.87	2.03
2.53	2.64	5.76	1.92
2.49	2.26	5.22	2.12
2.49	2.21	6.95	1.74
2.45	2.9	5.18	1.92
2.43	2.54	6.23	1.66
2.42	1.92	4.82	2.1
2.4	2.71	6.45	1.64
2.4	1.82	5.61	2
2.39	2.15	4.81	2
2.37	2.17	5.59	1.95
2.37	1.91	5.24	1.94
2.37	1.73	4.77	2.06
2.34	1.35	4.41	2.11
2.33	2.18	5.54	1.79
2.33	1.86	5.87	1.85
2.31	3.09	5.28	1.75
2.3	2.04	4.13	1.82
2.29	1.69	5.34	1.91
2.28	2.05	6.16	1.73
2.28	1.47	4.37	2.04
2.25	1.43	4.56	2.03
2.25	1.85	4.7	1.83
2.24	1.77	5.44	1.8
2.22	3.58	5.38	1.58
2.21	1.61	5.08	1.84
2.2	2.28	4.35	1.81
2.2	1.92	5.48	1.68
2.18	2.12	4.95	1.71
2.17	2.1	5.57	1.65
2.17	1.59	5.42	1.7
2.15	1.66	4.75	1.77
2.15	1.65	4.72	1.75
2.14	2.01	5.4	1.67
2.12	1.57	5.14	1.71
2.09	1.37	3.84	1.93
Total ¹	2.37	1.89	5.16

NOTE: Dependence is based on the definition found in the 4th ed. of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV).

NOTE: Estimates are based on a survey-weighted hierarchical Bayes estimation approach, and the prediction (credible) intervals are generated by Markov Chain Monte Carlo techniques.

¹ This estimate is the weighted average of the hierarchical Bayes estimates across all States and the District of Columbia and typically is not equal to the direct sample-weighted estimate for the Nation.

Source: SAMHSA, Office of Applied Studies, National Household Survey on Drug Abuse, 2000 and 2001.

Alcohol-Related Traffic Deaths

PER CAPITA 2003 CONSUMPTION RATES

<http://www.niaaa.nih.gov/Resources/DatabaseResources/QuickFacts/AlcoholSales/consum03.htm>

Per capita alcohol consumption, based on alcohol sales data

Per capita ethanol consumption for States, census regions, and the United States, 2003. (Gallons of

State or other geographic area (control states shaded in green)	Per capita consumption (2003)				Per Capita Consumption Standing (1 highest/ 50 lowest)		
	Beer	Wine	Spirits	All beverages	Beer	Wine	All
Hawaii	1.30	0.42	0.67	2.39	23	14	18
Alaska	1.27	0.37	0.79	2.43	24	19	13
Delaware	1.37	0.56	1.17	3.11	16	4	3
Montana	1.55	0.33	0.72	2.59	4	22	8
Rhode Island	1.12	0.51	0.79	2.42	38	8	14
North Dakota	1.53	0.17	0.86	2.56	5	41	9
Texas	1.46	0.23	0.51	2.19	10	34	32
Washington	1.05	0.46	0.67	2.19	44	12	31
Wisconsin	1.52	0.29	1.00	2.81	6	24	5
Connecticut	0.93	0.52	0.77	2.22	48	6	28
Illinois	1.25	0.35	0.74	2.34	26	21	23
South Dakota	1.51	0.16	0.73	2.40	8	43	17
Arizona	1.41	0.37	0.71	2.48	13	18	11
Florida	1.32	0.44	0.86	2.63	22	13	6
South Carolina	1.38	0.23	0.74	2.35	15	35	22
Louisiana	1.42	0.25	0.73	2.39	11	30	19
Missouri	1.33	0.25	0.68	2.26	19	31	25
California	1.08	0.50	0.65	2.22	41	9	29
Colorado	1.34	0.40	0.87	2.60	18	15	7
Mississippi	1.40	0.12	0.62	2.14	14	49	33
Vermont	1.32	0.51	0.64	2.47	21	7	12
Massachusetts	1.10	0.56	0.82	2.48	40	5	10
New Mexico	1.52	0.27	0.61	2.40	7	26	16
Pennsylvania	1.46	0.23	0.51	2.20	9	33	30
Maryland	1.02	0.32	0.77	2.11	46	23	35
Ohio	1.33	0.22	0.48	2.03	20	36	39
Wyoming	1.69	0.23	0.90	2.82	3	32	4
Alabama	1.18	0.19	0.52	1.89	33	38	45
Michigan	1.17	0.26	0.70	2.13	34	29	34
Nevada	1.76	0.62	1.25	3.63	1	3	2
New York	0.93	0.40	0.61	1.93	49	16	43
Tennessee	1.26	0.18	0.52	1.96	25	40	42
Virginia	1.14	0.36	0.53	2.03	37	20	38
Arkansas	1.06	0.14	0.56	1.76	42	47	47
Minnesota	1.21	0.29	0.90	2.41	29	25	15
New Hampshire	1.72	0.70	1.61	4.03	2	1	1
North Carolina	1.21	0.27	0.52	2.00	30	27	40
Oregon	1.20	0.47	0.68	2.35	31	11	21
Maine	1.24	0.39	0.73	2.36	27	17	20
New Jersey	0.95	0.50	0.79	2.24	47	10	26
Oklahoma	1.06	0.13	0.73	1.93	43	48	44
Indiana	1.11	0.21	0.64	1.96	39	37	41
West Virginia	1.23	0.10	0.38	1.71	28	50	49
Nebraska	1.42	0.18	0.63	2.23	12	39	27
Georgia	1.19	0.26	0.66	2.11	32	28	36
Idaho	1.14	0.64	0.54	2.33	36	2	24
Kansas	1.15	0.17	0.56	1.88	35	42	46
Kentucky	1.03	0.15	0.56	1.74	45	45	48
Iowa	1.37	0.15	0.53	2.05	17	44	37
Utah	0.77	0.15	0.39	1.31	50	46	50

Source: <http://www.madd.org/stats/11087>

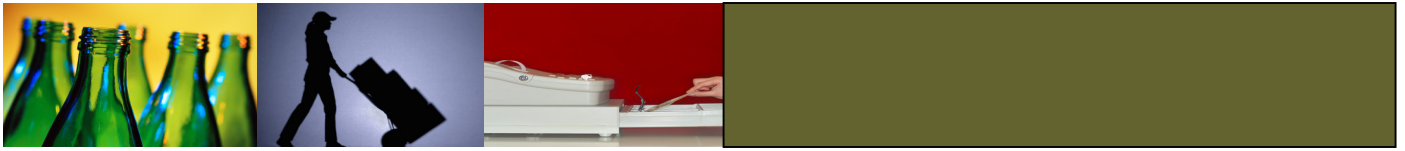
Alcohol-Related Traffic Deaths - 2005				
2005 Total Traffic Deaths	2005 Alcohol Related Deaths	% of Alcohol-Related	Fatalities involving a .08+ BAC driver	% involving .08+ BAC driver
140	71	51%	53	38%
72	35	49%	27	38%
134	66	49%	53	40%
251	124	49%	105	42%
87	43	49%	29	33%
123	58	47%	45	37%
3,504	1,569	45%	1,224	35%
647	294	45%	235	36%
815	369	45%	313	38%
274	120	44%	91	33%
1,361	580	43%	440	32%
186	80	43%	69	37%
1,177	492	42%	362	31%
3,543	1,471	42%	1,023	29%
1,093	464	42%	359	33%
955	394	41%	309	32%
1,257	515	41%	398	32%
4,329	1,719	40%	1,250	29%
606	244	40%	198	33%
931	371	40%	302	32%
73	29	40%	28	38%
442	171	39%	134	30%
488	189	39%	143	29%
1,616	636	39%	523	32%
614	235	38%	161	26%
1,323	505	38%	385	29%
170	65	38%	54	32%
1,131	423	37%	358	32%
1,129	421	37%	312	28%
427	159	37%	126	30%
1,429	524	37%	358	25%
1,270	464	37%	371	29%
947	347	37%	263	28%
648	233	36%	195	30%
559	201	36%	163	29%
166	60	36%	54	33%
1,534	549	36%	414	27%
488	177	36%	121	25%
169	59	35%	49	29%
748	263	35%	180	24%
802	283	35%	231	29%
938	320	34%	253	27%
374	126	34%	108	29%
276	91	33%	76	28%
1,729	545	32%	413	24%
275	89	32%	82	30%
428	151	32%	115	25%
985	313	32%	246	27%
450	118	26%	96	21%
282	37	13%	33	12%

National	43,443	16,885	39%	12,945	30%
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Appendix K

50-State Survey Results

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50-State Survey – Summary of Results

STATE REGULATIONS RELATED TO THE DISTRIBUTION AND SALE OF BEER AND WINE

During the 2006 legislative session, the Washington State Liquor Control Board (LCB) was directed by the Legislature to conduct a comprehensive review of the state's three-tier system for the sale and distribution of beer and wine. The purpose of this review is to identify key issues and concerns about the current system for the sale and distribution of beer and wine, and to determine whether changes, if any, are warranted.

The LCB has convened a task force, comprised of industry and public stakeholders, to provide recommendations related to the review, and Sterling Associates is assisting with this effort. Sterling Associates has been meeting with industry stakeholders (including business, government, and public health and safety) to identify key issues and concerns related to the state's existing regulatory framework. To provide the task force members with a comparative analysis of how other states have addressed these key issue areas.

The **purpose of this survey** was to gain an understanding of how other states approach a number of issues raised as concerns in Washington. This information will be used to inform the Washington State Liquor Control Board's Three-Tier Task Force as it develops recommendations to the Legislature about whether the state's existing system should be modified.

We received a total of 18 responses, including Washington. Eight of the 18 responses were from Control states and nine were received from License states. The survey itself was very broad, and asked for feedback in a wide array of areas. This approach did not allow us to gather detailed information about any particular aspects of each state's system, and additional follow-up may be required to gain a more in-depth understanding of specific issues. The responses received, however, demonstrate the varied nature of regulation of beer and wine distribution and sale. No two states appear to approach their regulatory role in exactly the same way. Instead, each state has developed its system in response to the unique needs and values of its own citizens.

We would like to thank those states submitting a response to the survey. These states include:

Arkansas, California, Colorado, Iowa, Kansas, Maryland, Minnesota, Mississippi, Missouri, Montana, North Carolina, North Dakota, Oregon, Texas, Utah, Virginia, Washington and Wyoming.

For further details about the 50-State survey or the results presented here, please contact Jill Satran, Sterling Associates, by phone at 360.956.9064 or by email at jills@sterling-llp.com.



SUMMARY OF RESULTS

50-STATE SURVEY OF BEER AND WINE DISTRIBUTION AND SALES SYSTEMS SUMMARY OF RESPONSES					
Question		Y	N	NA	Comments
Q-1	Does your state mandate the use of a distributor in the distribution of beer and wine? Is the 3-Tier system mandatory?	18	0	0	Utah: For 3.2% beer only. WA: Yes for foreign, in-state and out-of-state manufacturers of beer and wine can sell directly to retailers.
Q-2	Does your state allow in-state beer/wine manufacturers to distribute their products directly to retailers?	12	5	1	
Q-3	Does your state allow out-of-state beer/wine manufacturers to self-distribute their products directly to retailers?	3	14	1	
Q-4	Describe your state's regulations related to the relationship between manufacturers and distributors?				See individual statutes
Q-5	Have any changes to your state's requirements related to use of distributors been made recently?	11	0	7	
Q-6	If changed, have the impacts of those changes been measured?	1	9	8	
Q-7	Does your state require manufacturers and/or distributors to post prices?	9	9	0	
Q-8	Does your state require manufacturers and/or distributors to hold their prices?	7	10	1	
Q-9	Does your state require that all products sold by a manufacturer or distributor be sold at the same price to all retailers?	12	5	1	
Q-10	Does your state allow beer and wine to be sold at a discount for quantity purchases or other circumstances?	13	4	1	
Q-11	If your state allows discounts, does a discount price have to be offered uniformly to all retailers?	11	4	2	
Q-12	Does your state allow beer and wine products to be delivered to a retailer's central warehouse?	5	12	1	
Q-13	Does your state require that all the manufacturer's or distributor's price reflect the cost to deliver the retailer's premises, and be uniform to all retailers?	7	7	4	
Q-14	Does your state regulate the methods that may be used to deliver product to the retailer, in particular when a manufacturer is self-distributing product to a	9	7	2	
Q-15	Has your state adopted pricing policies that are designed to maintain higher prices in order to reduce abusive consumption?	1	17	0	
Q-16	Does your state require a minimum mandatory mark-up at any point in the distribution chain?	3	15	0	
Q-17	Does your state restrict or prohibit a manufacturer or distributor from providing items of value to retailers?	18	0	0	



SUMMARY OF RESULTS *(continued)*

50-STATE SURVEY OF BEER AND WINE DISTRIBUTION AND SALES SYSTEMS SUMMARY OF RESPONSES					
Q-18	Has your state adopted any general de minimus or specific exceptions to the general restrictions against providing items of value to retailers?	12	1	0	
Q-19	Does your state restrict or prohibit a manufacturer or distributor from taking an ownership interest in a retail establishment?	16	1	0	
Q-20	What exceptions to your state's general tied house restrictions have been granted?				
Q-21	Does your state allow any indirect ownership among the tiers?	13	3	2	
Q-22	How many licenses have been granted? (See other sheet)				See additional worksheet
Q-23	How many enforcement officers does your state have to enforce non-retail (manufacturer and distributor) business and trade regulations?	Ranges from none (Iowa and Montana) to 350 (Texas, includes non-CPO compliance officers)			In 9 states enforcement is part of the ABC. In other states, enforcement duties are found in Dept of Justice, Dept of Revenue, Dept of Public Safety, Office of State Tax Commissioner
Q-24	How many non-retail and trade violations did your state's enforcement officers investigate last year?	Ranges from none to 2,500			
Q-25	How many and what types of citations were issued?	Ranges from 9 to 2,410			Types: Criminal citations; trade practice violations with civil penalties; advertising and providing other than ordinary commercial credit; wholesale selling to improperly licensed retailer; cooperative advertising; underpayment of taxes
Q-26	How much beer and wine is produced in your state annually?				
Q-27	Is there anything unique about your state that influences the level of beer and wine produced, sold, consumed?	4	7	6	Bordered by license states that have lower beer or wine tax rates; bordered by states with lower alcohol beverage prices; beer and wine commissions established in the state.
Q-28	Does your state measure the impacts of its alcohol distribution policies?	3	11	4	
Q-29	What taxes are collected on the distribution and sale of beer and wine?	Excise and sales			
	At what point in the distribution chain are these taxes imposed?	Varies			Excise taxes are collected from manufacturers when the products are released from federal bond. Beer, wine imported into the state are collected from the licensed importer (generally wholesaler) Paid by distributor when product is sold to retailer Collected from person who first produces or imports the alcoholic beverage into state At wholesale level Manufacturer pays taxes on gallonage they ship into the state Taxes collected by first distribution point in the state
	How much revenue did your state collect from these taxes in calendar year 2005?	Excise Taxes: \$1,388,250 (WY) to			
	What percentage of your state's overall annual revenue collection does this represent?	ranges from less than 0.0% to 9%		10	

Discussion with Other States on Regulations as Issue with the U.S. District Court As Captured in Telephone Calls – Not Necessarily Official Positions

The six states of focus in this document were chosen, under time constraints, because of the state's responding to the survey recently conducted (only 17 of 50 responded), these six were the most congruent with the regulations at issue in the U.S. District Court ruling – that is they have many regulations in place (or do not have prohibitions against them) that are in line with options Washington may want/have to consider.)

CALIFORNIA	OREGON	COLORADO	TEXAS	MONTANA	NORTH DAKOTA
PRICE POSTING					
<p>For beer only. Fear that small distributors would go out of business if price posting was eliminated. Have to post prices, then give 10 days notice before increasing. If a competitor has a low price that another retailer wants to meet, they can decrease their prices immediately to no lower than the competitor's price. Without this regulation, could have price wars since beer is such a volatile product – prices could change on an hourly basis.</p> <p>Wine is a different situation. No price posting, no price regulation at all and no problems have been seen. Can even sell below cost if they want.</p> <p>When price posting</p>	<p>No price posting. Must hold price list on premises for 2 years. Price posting was eliminated in the late 1980s. There has been no negative outfall that they can tell. It is a “non-issue.”</p> <p>No routine audits. Investigated on complaint basis only.</p>	<p>No price posting</p>	<p>No price posting or hold. Wine and liquor regulated together; beer regulated separately. Generally don't control prices – just can't use pricing to get more shelf space or something like that. Must keep all of their records on premise for period of two years, which are auditable. Not required to hold prices for any period of time.</p>	<p>No price posting or hold. No regulations at all – are not required to keep price lists. Don't require any hold. No problems. Don't allow malt beverages anywhere. Technically they would have to come through the state's central warehouse, and they just don't carry it.</p>	<p>No price posting for wine or beer. For beer, if wholesalers <i>advertise</i> a price, they have to also let the LCB know and keep that price list for one year, available for audit.</p>

CALIFORNIA	OREGON	COLORADO	TEXAS	MONTANA	NORTH DAKOTA
went away on spirits, there was a consolidation of distributors, generally the marginal firms, but a consolidation nonetheless. Will likely see the same thing in beer, not likely so much with wine; it is a different product. But ultimately the prices stabilized, distributors stabilized and after the initial shakeout, haven't experienced a problem with wine or spirits.					
PRICE HOLD					
10 day hold for beer only. Can have a one day post-off if they post prices 10 days in advance. Can post for one day and at the same time post to increase the price the next day (10 and 11 days later). That would allow someone to give a really good rate to their favorite accounts, just not tell their other accounts, then the price is back up and they	14 day hold if price is discounted. Believe that the hold is to ensure a wholesaler doesn't lower their price for 1 day, go out and market it to their best clients then raise the price the next day again. Must hold price list on premises for 2 years. No regular audit, only investigated by complaint.	??	No hold.	No hold.	No hold.

CALIFORNIA	OREGON	COLORADO	TEXAS	MONTANA	NORTH DAKOTA
don't have to offer it to anyone else.					
CENTRAL WAREHOUSING					
<p>Allowed, and the regulations really don't address the practice, so it's basically not really regulated. The warehouse must be owned by the exact same legal entity which they can verify from their "base file of multiple outlet licensees." No retail to retail sales allowed, so they can't sell to a sister company, the corporate headquarters, however, can move product between outlets. No problems with this activity in CA. Some beer distributors don't really like it because they are required to provide certain services to their customers (restocking, etc.) and they are required to provide that service, even if they didn't sell them the product, so if a product comes in from a store in another</p>	<p>Not allowed. Must deliver "malt beverage" to licensed premises. [Staff will check to see if there has been a recent change related to wine.]</p>	<p>Not allowed.</p>	<p>Some allowed recently.</p> <p>"Package store" sells to go (all products). Privately owned. One of a chain of package stores in the same county can designate one of their stores as a central warehouse in that county and distribute from there, but only within the county. This was just allowed a few years ago. Why? Because they have a strong lobby and they got the legislature to change it. The other stores didn't ban together to influence the legislature and ask for it.</p> <p>Grocery store type cannot have a central warehouse. These retailers just did not ban together to influence the legislature.</p> <p>The main concern is</p>	<p>Distributors may have one warehouse, and 3 sub-warehouses.</p> <p>Retailers cannot have central warehouse.</p> <p>In-state can sell directly, but not out-of-state. May change this legislative session, but don't know for sure.</p> <p>In-state wineries can use a common carrier; breweries cannot.</p> <p>Don't know why – just how the legislature decided. Do not require common carriers to be licensed. Have the ability under statute, but don't.</p>	<p>Yes. If a retailer has a warehouse, it can be delivered there, and the retailer can move the product to their locations. Not really any regulations around it. Retailers cannot buy from one another. All manufacturers must go through wholesaler, in-state or out-of-state. (Have 1 active brewery and about 15 wineries.) Manufacturers can sell their own product on their own premise, but they can't self-distribute.</p>

CALIFORNIA	OREGON	COLORADO	TEXAS	MONTANA	NORTH DAKOTA
county, they may have to handle it even though they didn't sell it to the retailer. But other than some minor complaining, it's a non-issue.			diversion, so they need to keep records on premise showing they lawfully obtained the product and they lawfully distributed it to a licensed premise. All records for 2 years and they are inspectable upon demand.		
CREDIT					
30 day credit allowed. If not paid, must be COD. On the 43 rd day, must impose a 1% interest penalty (can be more, but must be at least 1%). It's a violation for the distributor to not shift to COD, to not impose the 1% interest and to not collect the 1% interest. Probably could be an issue of some retailers getting preferential treatment, if the big guys are getting really favorable terms and smaller accounts not getting terms at all, but that also is a business decision.	No credit allowed from distributor to retailer.	Allowed.	If purchasing beer, not allowed ; distributor-retailer, cash on or before delivery. Wholesalers and liquor (wine included), allowed . Anything purchased by the 1 st has to be paid by the 15 th . If not, go on the delinquent list, maintained by the Commission, and they can't buy liquor from any other wholesaler in the state. Seems to work well. Sometimes drives retailers to buy illegally from other retailers, but sanction if they find them. The list is available, and the	7 day credit limit from distributors to retailers. State can assess an administrative penalty for violating. If distributor carries the liability past the time, they are in violation – consider it an ownership interest. Only act on complaints. Distributors are very competitive, and do file complaints on each other, but mostly the state just says, don't do that; they are not going to act as the distributors collection agency. Will take administrative action against licensee if they are not paying	Beer cash only. Because it's what the beer wholesalers wanted. Wine, can have credit terms – whatever is normal for the industry.

CALIFORNIA	OREGON	COLORADO	TEXAS	MONTANA	NORTH DAKOTA
<p>Could potentially be a problem if, say, a big retail firm was given really favorable terms and they maxed it out and then went belly up, but they haven't had any of this occur.</p>			<p>Commission is required to notify wholesalers of anyone delinquent – they do this by posting on the web. Used to send out a list, now publish to web, and distributors need to check. Penalty to wholesaler if they sell to someone on the delinquent list and penalty to retailer that continues to buy if they are on the delinquent list. There is a suspension in days – shut down, or option to pay civil penalty and remain open. It's staggered depending on the number of violations. The Commission has authority to charge from \$150 – \$25,000 a day on the penalty. Commission can set the penalty but not by size of the violator (i.e. a big chain store cannot be charged more than a small retailer). Usually starts at 3-5 days or \$250 a day, then 10-15</p>	<p>sometimes. Most distributors will cut them off for non-payment. Don't allow retail-to-retail sales. The retailer could go to another distributor for wine, but not for beer – have territories.</p> <p>Need to keep records and make them available to the department. No time limit specified, but general rules are 5 years.</p>	

CALIFORNIA	OREGON	COLORADO	TEXAS	MONTANA	NORTH DAKOTA
			<p>day suspension for 2nd violation and 25-30 days for 3rd. May be going to \$5000 a day for the distributors for first violation. Have allowed credit for a long time. Compliance division maintains the list delinquent list.</p> <p>Distributors can buy on credit from manufacturers; no regulations.</p> <p>Credit: usual reason for ban is the pre-prohibition experience, using credit as a tool against a weak retailer to establish dominance and compel the retailer to practices that promoted misuse; un-payable debt of credit that supplier held over their head. Doesn't make sense anymore.</p> <p>Recognize the threat of credit is the tied house relationship and tax collection. Can't use credit to coerce, but don't just outlaw credit. There may be some</p>		

CALIFORNIA	OREGON	COLORADO	TEXAS	MONTANA	NORTH DAKOTA
			<p>danger that wholesaler could establish a dominant relationship with a small retailer (not a larger retailer), there are ways to control. Should only be illegal to establish a controlling interest in retailer.</p> <p>Don't care how – don't try to regulate the means, just say they can't establish a controlling interest. Decide what the core public interest to be protected is, and then concentrate on the result, not on the means.</p>		
UNIFORM PRICING					
<p>Required for beer only. Only in terms of offering the same discounts to everyone. No audits, no requirement to hold price lists or anything. Violations are investigated forensically through invoices, etc. but in reality they just don't pay much attention to wine prices.</p>	<p>Required. Wholesalers must offer the same price to all retailers.</p>	<p>Not required.</p>	<p>Required - must charge the same price unless there is business reason not to; if they can justify a legitimate business reason, including building their market share, etc.. Liberally construed.</p> <p>Underlying policy related to pricing is that it is a competitive</p>	<p>No requirements for uniform pricing.</p> <p>No price wars or problems.</p>	<p>Yes, for beer. Wholesaler must sell beer at the same price to all retailers. Because the beer wholesalers wanted it that way. Not wine, can negotiate. (Only have 2-3 wholesalers in the state.)</p>

CALIFORNIA	OREGON	COLORADO	TEXAS	MONTANA	NORTH DAKOTA
			market. Hear the argument or fear that it will promote public intemperance. Public interest in pricing is to ensure pricing is not handled in such a way as to promote public intemperance. Pressure from courts is not to regulate the means (sales) but the consumer. Regulate actual practices at the source that promote over-consumption; over serving, etc.		
VOLUME DISCOUNTS					
OK for wine , but must be offered to all retailers . (otherwise it's a "thing of value" and a tied house violation.) Otherwise, don't care about prices in CA. And, haven't seen any real problems related to it. Prohibited for beer .	Not allowed.	Discounts OK, need not be offered uniformly.	Allow, but must offer the same discount to all, unless there is a business reason to charge differently. Distance, fuel surcharge, etc., and then it must be charge the same to all who fit in that reason (for instance two retailers in the same city would need to be charged the same fuel surcharge). Business reason is sometimes difficult to	Volume discounts allowed. No restrictions. Can negotiate.	Yes. Can get volume discounts, as long as the same to all retailers for beer. No controls on wine – volume discounts can be negotiated.

CALIFORNIA	OREGON	COLORADO	TEXAS	MONTANA	NORTH DAKOTA
			regulate. For instance they may be able to justify selling only to one outlet if they can justify a business reason to only offer to one on-premise account to build a customer base because there is a small supply. They need to document. Marketing practice and legal general council office decides. Their code is liberally construed. They do a lot of interpretation. If they get a complaint, enforcement gets the facts, and then refers to marketing or general council. It just has to be reasonable, we don't try to stand in their way if it makes sense.		
DELIVERED PRICING					
Beer wholesalers can post a “delivered price” or “FOB or dock price” or both for each package sold to retailers. Beer must be sold at the price listed. Not an issue with	Staff will check.	Delivered pricing not required.	Delivered pricing is required, but allow a fuel surcharge. Must put the same surcharge to anyone for the same reason or criteria (i.e., same distance, same charge). Exceptions	Not required.	Required, but can charge surcharge for specific reasons.

CALIFORNIA	OREGON	COLORADO	TEXAS	MONTANA	NORTH DAKOTA
wine at all.			need to apply to everyone in the same circumstances.		
MINIMUM MANDATORY MARK-UP					
None. (Also no requirement that retailer sell at or above cost.)	No minimum markup required. Anyone can sell at any cost (even below cost.) The Oregon Liquor Commission does not see price as a problem and does not connect cheap product with over consumption.	No minimum markup	No. Texas doesn't control prices. Charge taxes at wholesale and retail level. Have tried to argue price matters, but have never been able to prove it or find a study that does. Texas is interested in the end result not in trying to control how. If someone is misusing alcohol, we regulate it there, not trying to regulate the means.	Not required.	Not required.
NAMING RIGHTS					
	Haven't yet encountered.	Stadium authority can enter into naming agreement, but not the licensee			
TIED HOUSE					
			More exception based. Example: Sea World has an interest in Budweiser. At first said, no can't do that and be licensed to retail	Fairly rigid in maintaining separation. Don't allow any ownership, even between manufacturers and distributors. Do	Very brief. Manufacturers and wholesalers cannot provide anything of value. Pretty gray. Pretty much just say

Discussion with Other States on Regulations as Issue with the U.S. District Court As Captured in Telephone Calls – Not Necessarily Official Positions

CALIFORNIA	OREGON	COLORADO	TEXAS	MONTANA	NORTH DAKOTA
			alcohol. Legislation changed to allow Sea World to have a concessionaire to sell product. Restrictions so owner interest can't control product for market share. Audit annually. Otherwise pretty strict.	allow some exceptions – example wineries can have sample rooms, and breweries can serve a limited amount. Manufacturers can sell at their location for off-premise consumption.	no, with a few exceptions based on monetary limit. Hoping to clarify more in the next legislative session.
COMMON CARRIER					
			<p>Yes. Wineries can sell to retailers directly and can use common carrier. Beer cannot be sold directly. TX legislator has wanted to promote in-state wineries. Out of state can also sell (due to lawsuit).</p> <p>Distributors could use common carrier as well. No restrictions.</p> <p>Common carrier has to be licensed by the Commission, and pay for permit – annual fee – more revenue to the state.</p>	<p>In-state wineries can use a common carrier; breweries cannot.</p> <p>Don't know why – just how the legislature decided. Do not require common carriers to be licensed. Have the ability under statute, but don't.</p>	No regulations.

As a reference that may or may not be helpful, the following table illustrates where each of these states is in its overall consumption of alcohol.

	Per capita consumption				Per Capita Consumption Standing (1 highest/ 50 lowest)		
	Beer	Wine	Spirits	All beverages	Beer	Wine	All
California							
Colorado	1.34	0.40	0.87	2.60	18	15	7
Montana	1.55	0.33	0.72	2.59	4	22	8
North Dakota	1.53	0.17	0.86	2.56	5	41	9
Oregon	1.20	0.47	0.68	2.35	31	11	21
Texas	1.46	0.23	0.51	2.19	10	34	32
Washington	1.05	0.46	0.67	2.19	44	12	31

Appendix L

Comments from Stakeholders During Review Process

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LCB 3-Tier Review Task Force –
Written Comments Received between May 3 and May 12, 2006

The following written comments were submitted to the Task Force on or before May 12, 2006:

1. Task Force member, Shelley Sieveking, submitted her written response to the discussion topics from the May 3, 2006 meeting. She will be unable to attend the meeting on May 18 and wanted to pass along to the full Task Force her comments on the state's policy goals and supporting strategies.
2. John Guadnola, attorney to the Washington Beer and Wine Wholesalers Association (WBWWA), submitted comments regarding the WBWWA's understanding of the definition and purpose of the "orderly market" policy goal, and their understanding of the underlying principles of the state's current system of regulation.
3. The Washington State Sports and Entertainment Facilities Operators Association (WSSEFOA) submitted a written response at the focus group for sports and entertainment facility operators. Their response discusses the association's concern about the constraints Washington's tied house laws place on advertising – specifically, the restraint on naming rights – and the impact these constraints place on the venues' opportunities to raise revenue.

LCB 3-Tier Review Task Force –
Written Comments Received between May 3 and May 12, 2006

Jill Satran

From: Shelley Sieveking
Sent: Thursday, May 11, 2006 8:10 AM
To: Kimberly Rau; Jill Satran
Subject: Washington Task Force

Good morning.

As I mentioned, I will not be able to attend the May 18 meeting. I apologize that I cannot be there in person. I am still trying to arrange a designee but since that still looks so uncertain, I wanted to get my thoughts to you prior to the May 12 deadline. I have reviewed the “Draft Results – Working Document” distributed May 10, 2006.

- **Topic #1 – Fostering Temperance**

With regard to Discussion Topic #1, I believe the State’s policy goal to foster temperance and promote moderation in consumption of alcohol is still appropriate and relevant today. I agree with the working interpretation of “responsible consumption by legal adults.” Responsible consumption, by definition, does not result in harm to others. Responsible consumption, by definition, is not misuse of alcohol. Thus, fostering temperance should continue to be a policy goal and the working interpretation “to promote responsibility in consumption of alcohol by legal adults” is a good working interpretation.

- **Topic #2 – Orderly Market**

With regard to Discussion Topic #2, I think the State’s policy goal of controlled, responsible and orderly marketing of alcohol is still appropriate and relevant today. I think it is important that Washington State not abandon an “orderly market” in alcohol as one of its public policy goals. I would like to vote that this goal be continued and if you can share my reasoning with the rest of the group in my absence, I would be most appreciative.

Maintaining an orderly market for the sale of alcohol is one of the States’ core powers under the 21st amendment. The United States Supreme Court and Federal Court of Appeals have consistently confirmed this to be the case.

In the context of alcohol, an “orderly market” is not an economic concept. It does not refer to the economists’ idea that “order” means product is neither oversupplied nor undersupplied to a particular market. The concept of an “orderly market” describes the social control necessary to prevent the well-known risks of unregulated alcohol distribution. This is discussed in the Rockefeller Report which was commissioned after Prohibition to establish an effective system of alcohol control.

- **Policy Strategy – Controlling the Flow**

An orderly market controls both the flow of alcohol and access to alcohol. This continues to be an appropriate/relevant strategy. This includes:

- a. Physical control over and ability to track the product;

SIEVEKING COMMENTS (continued)

- b. Controlling who sells the product, and to whom;
- c. Controlling the relationships between different parts of the distribution chain; and
- d. Controlling who buys the product and from whom.

A state has the power to regulate or control the passage of alcohol beverages through its territory in the interest of preventing their unlawful diversion. An “orderly market” is one that is structured to prevent diversion of alcohol into illegal unlicensed, unregulated channels. [Both Rockefeller Reports.]

Diversion is not just a thing of the past. “Diversion activities are . . . defrauding the U.S. of tax revenues. In this case, non-tax-paid cigarettes and distilled spirits are fraudulently claimed for export markets (for which there is no tax liability) when in fact they are illegally diverted back into the U.S. domestic market for sale where taxes should apply.” Illegal distribution of alcohol has also been uncovered in Washington. [ATF Online, “Diversion,” May 4, 2006; Norman Clark, The Dry Years.] The fact that there are not larger numbers of diversions documented may well result from the lack of investigation and enforcement dollars available for alcohol-related illegal distribution.

Diversion of alcohol from the United States into Canada continues to be a substantial problem. This diversion not only deprives the state and federal governments of tax revenues, it also creates unlicensed, unregulated distribution channels through which alcohol can be diverted to an illegal United States market. Similar problems exist in Europe. [Background materials available.]

We also know from bitter historical experience that failing to control the flow and access to alcohol can result in wildly unregulated alcohol distribution, and diversion into illegal channels.

An orderly market also prevents or restricts the illegal manufacture of alcohol. This, too, is also not just a historical problem. In the 1970’s and 1980’s, ATF seized over 6,000 illegal stills and millions of gallons of illegal spirits and its components. [ATF On-line: Illicit Liquor] Illegal manufacture of alcohol will predictably rise as a result of a “disorderly” market.

- **Policy Strategy – Separate the Three Tiers and Ensure a Level Playing Field**

I believe these two strategies are still appropriate and relevant and I think they are overlapping concepts.

An orderly market prevents the undue influence by suppliers and wholesalers over retailers, and vice versa, that can arise through vertical integration. “Order” involves structures and laws that prohibit “the ‘overly aggressive marketing techniques’ that had been characteristic of large-scale alcoholic beverage concerns” before Prohibition. [See Actmedia, Inc. v. Jay Stroh, 830 F.2d 957,959 (9th Cir. 1986).

We cannot ignore our industry’s history on this point. One of the primary problems that led to the excesses and abuses before Prohibition was the financial domination of retailers by suppliers. [Rockefeller Report] This is not just a historic concern. On a day-to-day basis, preventing undue financial influence continues to be one of the State’s main tasks.

Tied house laws, which institutionalized the separation of the supplier and wholesale tiers on one hand, and retail tier on the other, were designed specifically to prevent a return to “disorderly markets” characterized by financial intermingling of interests, involvement of criminal elements in the

LCB 3-Tier Review Task Force –

Written Comments Received between May 3 and May 12, 2006

SIEVEKING COMMENTS (continued)

trade, exclusivity arrangements, distribution of extremely inexpensive or free alcohol beverages, among other things. [See, Dickerson v. Bailey, 87 F. Supp. 2d 691, 703 (D. Tex. 2000)].

Smaller, independent retailers, who make up the bulk of retail licensees in Washington in terms of both number and volume of alcohol sold, still need the State's help in maintaining their financial independence from more powerful suppliers and wholesalers.

And the emergence of powerful retailers actually enhances the need to prevent undue influence – but in reverse. A powerful retail tier can exert undue influence on alcohol suppliers to emphasize production of larger volumes of reduced-price beverages, and at the expense of product variety.

To the extent that the market for beer and wine is not regulated, this risks the return of competitive pressures that led to inappropriate retail sales practices in the past and can lead to them again in the future.

Again, my apologies for my absence. I would appreciate it if you could share this input with the others on the Task Force.

Shelley Sieveking

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LCB 3-Tier Review Task Force –
Written Comments Received between May 3 and May 12, 2006

Jill Satran

From: Guadnola, John [JGuadnola@gth-law.com]
Sent: Thursday, May 11, 2006 12:48 PM
To: Jill Satran; Kimberly Rau
Cc: Phil Wayt
Subject: FW: comments to three-tier review task force

Jill and Kim:

I wanted to follow up on last week's Task Force meeting and the focus group discussion with the members of WBWWA with a few comments.

1. A meaning of "orderly marketing" can be found in the statutes. Specifically, RCW 66.28.180(1) states that the intent of the law is "the orderly and responsible distribution" of beer and wine. The statute goes on to specify that prices are to be posted and held, that prices are to be uniform, that prices must reflect at least the statutory minimum markup, that there are to be no volume discounts, and that all prices are to be delivered prices. Other portions of Title 66 specify that there are to be no sales on credit, no other "money or money's worth" going to retailers, no central warehousing, no sales from retailers to other retailers, no special arrangements with sports facilities or other entertainment centers, and a myriad of other provisions.

The overall thrust of all these provisions is that prices for beer and wine are intended to be relatively uniform and relatively stable, and that beer and wine are to be relatively widely available. Since this is the inevitable result of the current Washington system, and since the legislature said the system was intended to foster "orderly and responsible" marketing, the only logical conclusion one can reach is that the legislature thinks "orderly marketing" is a system that assure relative price stability and uniformity, and relatively wide availability, for beer and wine.

2. At the last Task Force meeting two people questioned why the State had any interest in orderly marketing. It appears to me that they are the only two people who think this is an issue, but it is a significant question.

In my view, the principal benefit of "orderly marketing" is the concept of control. If the market is left unrestricted, it will be extremely difficult for the State to know who is selling what to whom and at what price. That is not a problem with non-alcoholic products but it is potentially a severe problem with beer and wine. Many of the problems one can foresee arising in the context of sales by retailers to consumers will have their origin in the relationship between retailers and distributors or suppliers. As Tom mentioned, when there is price competition among retailers of beer and wine the community encounters problems. That kind of price competition would be facilitated by volume discounts, credit, non-uniform pricing or other marketing practices that would arise if the relationship between suppliers/distributors and retailers were left unregulated. Retailers operating on the edge of solvency, or who choose to operate on the edge of ethical business practices,

GUADNOLA COMMENTS (continued)

would try to take advantage of volume discounts or credit to reduce prices to consumers in order to maximize sales and cash flow.

The potential problems that would result if the ban on credit sales were lifted are a good example of the kinds of concerns that the concept of "controlled" or "orderly" marketing avoids. If wineries are permitted to offer credit, it will be only a matter of days before retailers are demanding credit; this will inevitably result in different customers getting significantly different prices, and the person who has the least need for credit will get the most generous terms. It will also make the small Washington wineries vulnerable to extreme pressure from retailer customers. If, for example, a small winery sells 25% of its production to a big box store on credit, and the buyer delays payment even a small amount, that winery will find itself in a precarious financial position. How will it react if the retailer agrees to pay promptly, and to continue making significant purchases, only if the winery refuses to sell to competitors of the box store? Or if the retailer demands a significant price cut not available to others? This is a hypothetical situation for wineries, but it closely mirrors what has happened to a number of producers of non-alcoholic products.

Similarly, if a marginal retailer were to obtain credit the temptation would be to maximize the impact of its limited cash by using the most credit available. That would put the retailer at risk of ending up indebted to a supplier or distributor to such an extent that the retailer could be coerced into dropping other brands, or into pushing as much beer and wine as possible by lowering prices as much as possible. By the same token, the distributor or supplier would be tempted to turn a blind eye to illegal sales by such a retailer because if the retailer were to lose its license the chance of the distributor or supplier ever recovering the money it advanced on credit would disappear.

The problems that would arise if orderly marketing were abandoned would also extend into the tax-collection arena. For example, if beer and wine manufacturers were permitted to extend credit to retailers tax collection would become more difficult. It is my understanding that, currently, the distributor or the manufacturer functioning as a distributor pays the tax. When the manufacturer is shipping directly to a retailer, the tax is not paid until the product moves from the manufacturer to the retailer. If the manufacturer does not get paid for the product for a few months, or if the retailer goes out of business or otherwise fails to pay entirely, the manufacturer has to make the tax payments out of its own reserves. That could be an enormous burden for smaller wineries and breweries, and the temptation to defer paying the taxes would be great. Actually, whether the manufacturer is large or small, if the system changes so manufacturers do not get cash on delivery and are at risk for the taxes, the ability to pay the tax is diminished and the risk that the state will not get paid goes up. The cash requirement gives the manufacturer the ability to pay the tax due to the state. As to wholesalers, they are required to pay the tax when they receive the product. If the cash requirement were eliminated, they would be at risk of not recovering taxes from the retailer. Even if the payment is made, credit would in essence mean that the wholesaler is advancing the taxes to the state and taking

GUADNOLA COMMENTS (continued)

the risk of not getting paid. Alternatively, the wholesaler and the manufacturer will argue that they should be able to get a refund for the tax if the retailer does not pay, or is very late in paying for the product. In either case, the risk of taxes being paid are reduced and the cost of collecting taxes will go up.

3. We are convinced that one of the overriding principles underlying Washington's approach to regulating beer and wine sales is to make them relatively widely available at reasonable, and reasonably stable and uniform, prices. This is the clear impact of the requirement of uniform pricing, the ban on volume discounts, and other regulations. If there were no regulations on the dealings between suppliers or distributors and retailers other than the requirement of a license, the smaller retailers, particularly those in more remote areas, would be at a severe disadvantage. This could result in many of them going out of business, and could make beer and wine more difficult to obtain. The effects of this would undoubtedly include people driving further to get beer and wine, with the attendant increase in the risk of those people driving under the influence.

Today, the vast majority of the participants in the beer and wine distribution market are honest people who make every effort to comply with the rules and to assure that beer and wine are sold responsibly. However, there are always people willing to act irresponsibly just to make a little more profit. If the relationships between suppliers and retailers were unregulated, the temptations faced by such people would be irresistible. There would be more beer and wine getting into the hands of retailers at low prices, and that would result in cheaper beer and wine prices for consumers. An individual consumer might think that was a good deal (unless he or she happened to get in a wreck on the way home), but it would not be a good deal for society.

Unlike other products, for beer and wine the lowest price to the consumer is not the lowest cost to society.

4. The current system works. The principal reason people today think the system may be antiquated or unnecessary is the fact that there have been relatively fewer problems with alcohol in the last 70 years than was historically the case before that. In our view, it is impossible to divorce that fact from the existing regulatory structure, most of which has been in place since 1934. One might speculate on other reasons for Washington having both a relatively high percentage of adults who drink (compared to other states) and at the same time relatively low per capita consumption. However, it would be folly to discard the current regulatory system on the basis of such speculation.

LCB 3-Tier Review Task Force –
Written Comments Received between May 3 and May 12, 2006

Washington State Sports & Entertainment Facilities Operators Association (WSSEFOA)

Response to Liquor Control Board Three-Tier System Review

The WSSEFOA is comprised of venues across Washington State, including Key Arena, Safeco Field, Qwest Field, Tacoma Dome, Spokane Arena, Everett Events Center, White River Amphitheater, and Emerald Downs. Collectively these venues safely host millions of customers a year, in the business of providing sports and/or entertainment events for the public. Ancillary activities associated with our primary business include the provision of food and beverage.

Because of the nature of the services provided, sports and entertainment venues in Washington State hold a specific "sports and entertainment facilities" liquor license. This is a different license from that held by restaurants, bars, or nightclubs.

Although it might appear on the surface that sports and entertainment facilities are not affected by the three-tier system – originally designed to prevent over consumption and block any one entity from monopolizing the system – we are indeed impacted by the "tied house" regulations.

Specifically, the tied house regulations prevent us from accessing certain revenue streams, in particular the naming of areas in our facilities (or the facilities themselves) by a manufacturer or distributor of alcoholic beverages – as the regulations are currently written, there can be no Coors Field or Budweiser Lounge in Washington State.

Our counterparts in many other states CAN and DO enter into partnership and naming rights arrangements with alcoholic beverage providers. The alcoholic beverage manufacturers desire a presence in sports and entertainment venues for branding purposes as part of an overall marketing strategy. There are many successful examples, and these venues also continue to serve a full variety of products to their customers, negating the concern that naming rights and partnerships imply an exclusivity that leads to monopolization or lack of competition. In addition, many of these partnerships include considerable commitment to safe alcohol management (for example: designated driver programs and public service announcements and campaigns), assisting in the goal of preventing over consumption.

Sports and entertainment venues are extremely expensive to operate and we continually search out new and creative ways to increase revenues and pay the bills. It is frustrating that in Washington State considerable revenues are made unavailable to us due to the tied house regulations. National advertisers take their money and spend it in venues in other states. It is important to us that these revenues have an opportunity to remain here in our Washington State venues. Generally sports and entertainment venues in this state have some level of public support – either in construction or operation – and the greater our ability to generate private sponsorship revenue, the less future public burden there may be.

Our proposed solution is that as a result of this review process, sports and entertainment facility license holders should be deemed exempt from the advertising regulations inherent in the tied house/three tier system.

LCB Three-Tier Task Force –
Written Comments Received Between May 12 to June 12, 2006

The following written comments were submitted to the Task Force between May 12 and June 12, 2006. These comments were forwarded to Task Force members previously, via email.

1. **Jeff Smiley, WA Small Brewer:** Concerned about possible removal of self-distribution. Insulted that Task Force material seems to single out the manufacturing tier as being responsible for the harmful effects of alcohol that occurs in the industry.
(Note: Mr. Smiley's comments were distributed at the last meeting, but they came in too late to be included in that meeting's summary of written comments.)
2. **Theresa Hancock, Contract Store Owner:** Currently can only purchase wine from the LCB distribution center. Would like to be able to sell wine purchased from other distributors, and would like the possibility of a greater markup than the 6.45% commission currently allowed.
3. **Judith Colby, USAWines.com, Internet Wine Retailer:** Would like internet sale issues addressed. Currently can only connect consumer to specific winery for sales. Would like to be able to work with different wine shops to bundle wines from different wineries into one package (as can be done in California).
4. **Mike Wade, Fielding Hills Winery, Small Winery Owner:** Other than issues of temperance and underage drinking, there is no reason for the state to be involved in regulating wine sales. With the exceptions noted, wine sales should not be controlled any more than other products, including tax collection. There are special interests vested in the current system and it appears the process is being scripted to favor a result of the status quo.
5. **Stephen Diamond, University of Miami School of Law Professor:** At request of WBWWA reviewed materials generated to date by Task Force. Materials do not elaborate on two points. 1) Significance of stable and orderly market, and 2) need for enforcement mechanisms that are practical and fiscally realistic. Related to #1 - current WA laws result in a more stable market. Related to #2 - regulation cannot be limited to policing the behavior of consumers and retailers directly, but must be comprehensive. Washington laws are sound and should not be tampered with lightly.
6. **Ken Casavant, Professor of Economics, Washington State University:** At request of WBWWA reviewed materials generated to date by Task Force. Believes the net effects of the three-tier system and other beer and wine regulations are somewhat higher prices, much more controlled access, and more effective tax collection. Elimination of restraints that "level the playing field" can be expected to result in fundamental changes in the marketing structure. The Task Force's role is make recommendations as to the appropriate balance between social costs and private efficiencies.
7. **John E. Morgan, Lost River Winery, LLC., Manager:** The state should be focused on prevention of access to minors and intoxicated individuals, collection of taxes and compliance. The three-tier system is designed to protect wholesalers. One example is the inability to ship to retailers via common carrier. We can ship to unlicensed consumers, but not to licensed retailers. The American wine industry is losing market share to foreign competitors. The new laws on direct to consumer shipping are much more restrictive and costly to manufacturers than previous reciprocal rules.

LCB Three-Tier Task Force –
Written Comments Received Between May 12 to June 12, 2006

Jill - what is the process by which I can ensure that the Task Force sees this kind of feedback from small brewers?

George Hancock
President
Washington Brewers Guild

From: JeffSmiley99@hotmail.com [mailto:jeffsmiley99@hotmail.com]
Sent: Wed 5/17/2006 1:17 PM
To: waguild_associates@yahoogroups.com; George Hancock
Subject: Re: [waguild_associates] FW: 3-Tier Task Force Website

This is some serious stuff. I see more pushing towards removing self-distribution. Here's an interesting passage:

Page 16 of the presentation:

"Core Assumption: manufacturer's profit motive to sell as much as it can of it's products should be mitigated because of the harmful effects of alcohol consumption; the manufacturer must be separated from the consumer"

How ridiculous is that? You mean the distributor isn't going to sell as much beer as they can to make a profit? Everyone in the chain wants to sell as much as they can. To single out the manufacturer is outright insulting. It makes it sound like the manufacturer is responsible for the harmful effects of alcohol that occurs in the industry.

George, you mentioned at the WBG meeting that you could forward feedback to the task force. Could you forward this feedback for me?

Jeff

LCB Three-Tier Task Force –
Written Comments Received Between May 12 to June 12, 2006

From: Theresa Hancock [mailto:tlcgolf@televar.com]
Sent: Friday, May 26, 2006 9:22 AM
To: Frederick, Sherry C
Subject: Comment for Three-Tier Task Force

Task Force Members,

My name is Theresa Hancock, and I am a contract liquor store manager in Washington State. There are 150+ contract liquor stores in Washington State. We are independent retailers that contract with Washington State to sell the liquor, wine and beer. I serve on the Contract Manager Advisory Committee that meets quarterly with the LCB. I also serve as the contact point between the LCB and the contract stores in regards to the CMAC group. I also served on Governor Locke's retail sales task force.

As a group we would be interested in being able to sell wine and beer other than those that we can get through the LCB. We currently are able to get a beer/wine license but LCB rule prohibits us from selling other wines that could be purchased from other distributors, but we are allowed to purchase beer from other distributors. If we were able to purchase wine we could offer a better selection to our customers. Also, our mark up on the wine from the distributor could potentially be greater than the 6.45% commission that we receive on LCB wine.

We would also like for you to keep our portion of the Three-Tier system in mind as you go through your deliberations. We do not have a lobbyist, union representation or a representative on the task force, so we do not want to be forgotten. Many of these items you are looking at will directly affect us. We do have investments in our businesses and are an important part of the retail piece.

If you would like any more information or would like to have a dialogue with the contract stores, we would be happy to give you any input needed.

One other point that I learned from the previous task force in regards to the three-tier system was that the current system does provide for a broader selection of spirits and prevents large wholesalers from gobbling up shelf space and forcing out the smaller wholesalers.

Best Regards,

Theresa Hancock
Contract Liquor Store Manager
tlcgolf@televar.com

day phone: 509-837-5445
evening phone: 509-837-8550
mobile: 509-830-2152

LCB Three-Tier Task Force –
Written Comments Received Between May 12 to June 12, 2006

From: judith@usawines.com [mailto:judith@usawines.com]
Sent: Friday, May 26, 2006 3:13 PM
To: Frederick, Sherry C
Subject: Comment for Three-Tier Task Force

As you consider the direction for new laws regarding wineries and wine shops in WA, I would appreciate your task force giving some thought to Internet sales of wine. We have been in business at www.USAWines.com for ten years now, and have felt hamstrung by WA liquor laws. The purpose of USAwines.com is two-fold: 1) to promote winery tourism, and 2) to sell wines. WA has some excellent wines and great winery tourism, and it seems a shame to have to ignore representing wineries in our home state.

When we moved from CA to WA in 1998, we asked WA Liquor Control what license we might need. We were told they had no idea how to handle Internet sales, so just go ahead as we were. Then in 2004 they contacted us and, following their advice, we secured Agent's Licenses for each of the WA wineries where we show wines for sale.

The way our shopping cart system currently works is that when someone orders wine, the order is forwarded to a winery for fulfillment. The sale is between the winery and the consumer, with the winery charging the credit card and shipping the product to states where legal. We would like to be able to work with retail wine shops in WA, as we do in CA, so as to bundle wines from different wineries into one package. However, current WA law requires that we either represent wineries or wine shops. We don't have a problem with that restriction, but if we choose to work with a wine shop, it is my understanding that would create a myriad of other complications.

If you would like some "e-tailer" representation on your Task Force, I would be happy to become involved in your discussions. Please feel free to call me with any further questions or suggestions.

USAWines.com

800-625-2610

Judith Colby
PO Box 712
LaConner, WA 98257
360-466-5094 ofc
360-391-3042 cel

LCB Three-Tier Task Force –
Written Comments Received Between May 12 to June 12, 2006

From: mike at Columbia Fruit Packers [mailto:mikew@columbiafruit.com]

Sent: Wednesday, May 31, 2006 4:24 PM

To: Frederick, Sherry C

Cc: Parlette, Sen. Linda Evans; 'George Valison'; John Morgan

Subject: Comment for Three-Tier Task Force

May 31, 2006

Dear WSLCB,

I understand scf@liq.wa.gov is the email address to submit comments regarding the 3 tier review.

I would like to submit the following to the task force for their consideration:

My wife and I own a very small winery in East Wenatchee. More of a glorified hobby than anything else, but we work very hard (with the help of family and friends) to produce world class red wines. My day job is helping operate Columbia Fruit Packers, a family owned apple and cherry growing and packing business. We produce 1.5 million boxes of apples and 750,000 boxes of cherries.

Other than the issues of temperance and underage drinking, I can see no reason for the state to be involved in regulating wine sales. I am very much aware of the massive bureaucratic system currently in place and can see no relationship to temperance or underage drinking. Why should selling a case of wine be any different than selling a case of apples? Really, why? How does price posting have anything to do with protecting the public interest (temperance and underage drinking)?

Taxes: Tax collection is an important issue for any government entity required to collect taxes, but how or why is tax collection from the wine trade any different than many other businesses?

I would strongly encourage you to reach out to the wine trade and ask for input. Create a survey form and collect information from all the stakeholders.

Please also recognize there are some very obvious "special interests" very vested in the current system. You must have the courage to openly and honestly acknowledge this reality and deal with it straight on. My review of the work done so far is troubling. It appears the process is being scripted to favor a result in the status quo. Please do not go this route.

In closing I would strongly encourage you to constantly ask yourselves how or why is this situation any different than the majority of unregulated business entities/activities in Washington State?

The magnitude of your work is huge. Please take the time to do this right.

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(Wade, page 2)

If I can be of any further help in this process please let me know.

Thank you for your time.

Sincerely,

Mike Wade
Fielding Hills Winery
East Wenatchee, WA
509-884-2221

Cc: Linda Evans Parlette
Cary Condotta
Columbia Cascade Winery Association members

LCB Three-Tier Task Force –
Written Comments Received Between May 12 to June 12, 2006

Stephen M. Diamond
1140 Asturia Avenue
Coral Gables, Florida 33134

June 5, 2006

Mr. Nate Ford, Chair
LCB Three-Tier Review Task Force

Dear Mr. Ford,

I am a professor of law at the University of Miami School of Law and have taught courses in U.S. alcoholic beverage law for ten years. In addition to my law degree, I have a Ph.D. in History. I spoke to Washington's first three-tier review task force a number of years ago.

At the request of the Washington Beer and Wine Wholesalers Association, I have reviewed the materials and comments generated to date by the Task Force. I am concerned that they do not sufficiently set forth and elaborate two important points. One is the significance of a stable and orderly market for the distribution and sale of alcoholic beverages. The other is the need for enforcement mechanisms that are practical and fiscally realistic. Accordingly, I am writing to give the Task Force some additional perspective on these points.

Washington's laws have the effect of creating a more stable market for the distribution and sale of alcoholic beverages. This was explicitly recognized by all of the expert economists who testified in the recent Costco litigation, the experts for Costco as well as those for the State and WBWWA. In this context "stable" means that sellers cannot react as quickly to ephemeral market changes, such as unanticipated promotional activities of competitors, as they could in the absence of the regulatory restraints. Prices are less volatile than would otherwise be the case. Decreased volatility is beneficial to the State for at least two reasons. The more volatile prices are, the more opportunities there are for sellers to promote the sale and consumption of beer and wine. The more volatile prices are, the easier it is for market participants to engage in discriminatory pricing practices and the harder it is for the State to detect those pricing practices.

This stability is not an accident, but was intended by the legislature that first enacted Washington's regulatory system governing the distribution and sale of beer and wine. Their aim following repeal of Prohibition was to permit only that degree of autonomy by private parties operating in the market that was conducive to and did not frustrate the state's regulatory goals of control and tax collection. Private profit seeking was to be permitted, but constrained. There was to be moderation in selling as well as in consumption. A structure was sought to make selling transparent and accountable and also to create incentives, as well as controls, that would encourage participants to work within the regulations and to help in their enforcement.

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Retailers were to be regulated in ways to reduce pressures on, and opportunities for, buyers to over-consume. Suppliers and wholesalers were to be regulated in ways to reduce pressures on, and opportunities for, retailers to oversell. In the language of the time, the "natural demand" for beer and wine was to be satisfied (because if it were not, illicit distribution and sale would be encouraged), but a stimulated demand was not to be permitted. This can still be seen in the attitudes of suppliers, particularly the large national brewers, who still routinely explain that their advertising programs are intended to steal business from their competitors, but not to attract new drinkers.

Sellers were to be encouraged to take a long-term view, aiming at steady moderate returns, rather than attempting to "get rich quick" by pushing against the regulatory boundaries. The Rockefeller Report of 1933 also encouraged stability in law-making. Its authors, Fosdick and Scott, advised against faddish and rapid regulatory changes which would only encourage short-term, get-rich-quick responses.

This kind of stable environment provides many regulatory benefits. Stability facilitates moderation in selling, and thus in consumption, in several ways. Sellers are not guaranteed financial success, but they are protected against market destabilizing stratagems, what used to be called unfair competition. This protection makes it less likely that retailers, and smaller companies in particular, will face such economic pressure that they will resort to selling practices that are outside the letter, and also the spirit, of the law. Profits were to be achievable for sellers who operated within the strict limits imposed by law.

There has been, in Washington as elsewhere, some rhetoric suggesting that alcoholic beverage regulation should be limited to policing the behavior of consumers and perhaps of retailers selling to consumers. Policing consumers and retailers must be part of the regulatory regimen, but a sensible comprehensive program should not be so limited. Laws to reduce pressures on retailers to oversell, to better monitor and control the price and quantity of goods arriving at retailers, to reduce pressures that would otherwise lead retailers to disobey the law to survive, do make sense. Such regulations together comprise a transparent and accountable distribution system.

A comprehensive regulatory program reduces the likelihood of point-of-sale violations and highlights that alcoholic beverages are products requiring control and self-control in their distribution, sale, and consumption. Not imposing all laws at one level, over any one group of participants, also reduces the risk that the regulated will become "demoralized", as it was termed when Prohibition was repealed. The concern, which was the result of direct observation during Prohibition, was that focusing too much regulation on one sector of the industry would create the impression that the regulated sector was somehow criminal. This would lead to a loss of respectability and would invite participants to view laws as obstacles to evade rather than as rules to be followed.

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Spreading the regulation throughout the distribution chain permitted each entity in each tier to face sufficient legal scrutiny to encourage voluntary compliance with the rules, subject to public review, but not such as to make any segment feel unfairly burdened. Comprehensive regulation is a manifestation of control, reflecting a determination that alcoholic beverages are a product whose use can create social costs and therefore demands public control.

The approach reflected in the original legislation, and still reflected in today's laws, is in effect "trust but verify," vesting significant self-control in drinkers and in sellers, but under legal supervision. A level playing field was sought not for its own sake, but to protect those sellers who acted within the law and to provide assurance that profits could be made by responsible parties.

This leads to my second point, which I will make only briefly. Washington, like other states, established a regulatory system that can be administered effectively. This is not achieved exclusively by direct supervision and, indeed, could not be. The cost and intrusiveness of such a program, with an inspector in effect supervising each point-of-sale transaction, is obviously insupportable. Rather, the system must depend to a significant degree on the willingness of members of the industry to submit to regulation and the self-interest that leads industry members complying with the law to report those who do not comply to the appropriate authorities.

One factor often cited for the ineffectiveness of Prohibition was that no economic interests had a stake in its success. The Repeal system, through licensed distributors and retailers, aimed to rectify this omission. Licensed distributors and retailers were expected to aid in law enforcement by identifying violators. Their economic interest was obvious; their knowledge of the industry was useful. Those who were willing to forego short-term gains and accept the constraints which limited them were rewarded and, in return, were to serve as a mechanism for enforcement of the state's rules. It should be noted that much law enforcement in the U.S. is complaint initiated. This reflects fiscal pressures and a recognition that neighbors and competitors have particular knowledge of what goes on around them and particular concern that what does go on be lawful.

Washington's present statutes work to promote stability and, therefore, control abusive and non-abusive consumption. They are enforceable without an uneconomic and unrealistic commitment of money and manpower. I submit, based on my knowledge of the history of alcoholic beverage regulation in the United States, that the laws are sound and should not be tampered with lightly.

Sincerely,

Stephen Diamond

LCB Three-Tier Task Force –
Written Comments Received Between May 12 to June 12, 2006

To: Three-Tier Review Task Force Members

From: Dr. Ken Casavant
Marketing Economist

Subject: Comments on “Candidates for Change” in Three-Tier System

Date: June 2, 2006

I am an agricultural economist in the School of Economic Sciences at Washington State University. I received my Ph D from Washington State University in 1971, after having received my Bachelor of Science and Master of Science from North Dakota State University in 1965 and 1967, respectively. I have been on the faculty of Washington State University for 36 years where I teach and conduct research in food economics and marketing. My areas of teaching are in management, marketing, pricing and policy. My principal area of research interest is the marketing of food, especially logistics and transportation, and other policy aspects of the marketing functions.

I have been asked by the Washington Beer and Wine Wholesalers Association to review the materials developed by the Task Force and offer my professional evaluation of the economic and social impacts of some of the “candidates for change.” During the past two years I have studied the industry, focusing on the three-tier system and its rules/regulations, and have collected, read and evaluated most of the relevant academic and industry literature in the area of alcohol abuse, regulatory standards and market efficiencies. I offer these comments for the consideration of the Three Tier Task Force in their deliberations.

The three tier system and general tied house laws

The net effects of the three-tier system and the other beer and wine regulations are somewhat higher prices, much more controlled access, and more effective tax collection; all have been identified as historical goals of the regulatory structure.

Understanding the functions of the three tier system requires an understanding of the history of the regulatory system in Washington.

As prohibition ended, the goals of restructuring were varied but included eliminating bootlegging (the sin of the Prohibition era), minimizing illegal alcohol sales with their accompanying loss of taxes, and discouraging moonshine activities. The overall societal charge was, “people wanted to drink, how should they do it and how should it be regulated?”

The general response was the three-tier distribution system where producers were distanced from retailers by the functions performed by the distributors. A balance was to be struck between prices so low that consumption was encouraged and prices so high that bootlegging was feasible, within a system where retailers were not driven by producers.

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The specific goals underlying the the Steele act were the continuance of temperance, fairness amongst the participants in the marketing system, orderly marketing and production of tax revenue reflecting the consumption of the product. Because of the social costs of alcohol, which had become all too evident during Prohibition and the years leading up to Prohibition, it was clear that, with respect to beer and wine, the lowest cost for the consumer is not the lowest cost for society. The distribution system was designed to create a balance between social costs and individual consumer costs, while preserving control and furthering the other goals of the State.”.

This history leads to two questions: First, are those original goals still relevant today? Second, how were the goals to be accomplished when the law was first enacted?

Control of alcohol abuse and attendant social costs has not changed, from the view point of this economist and citizen of Washington. The overall operational approach by the state of Washington was to impose some constraints on the unfettered competition that had brought on Prohibition in the first place. The current system is designed to use the three-tier distribution system to achieve the goals identified above. Within the system are the varying components or statutes addressing the posting and holding of prices, the illegality of quantity discounts or the granting of credit, the equal delivered prices and the minimum markup requirement. This is a belt and suspenders system that serves to backup and achieve the overall goal. Each can stand by itself to varying degrees in the function they perform but they each serve to make the goal more achievable.

The essential question again is just what was the state trying to do and does this system achieve those goals. Temperance, orderly marketing and fairness in the market place were desired after the experiences before and during Prohibition. The desire to stop the breweries from controlling and forcing the actions and output of the retailers, while making alcohol more expensive and less accessible/attractive was filled by the various statutes.

When the legislature chose to support the three-tier system they placed value on the existence and role of the distribution system, namely the distributors in the market. My knowledge of marketing, and my review of marketing studies, have reinforced the common knowledge of the benefits and value created by the Washington beer and wine distributors.

First, and perhaps most critical from the viewpoint of the framers of the legislation, is the separation of the large producers from the retailers in the marketing channel. The absence of this separation, and the control of producers over retailers, was the source of many of the undesired results leading to Prohibition. Using distributors as a buffer between the suppliers and the retailers serves to balance market power. This balance, and the consequent absence of ‘tied houses”, result in individual firm decisions that are more driven by an overriding desire for volume sales without consideration of the social costs of that consumption. Moreover, one of the results of this slightly constrained market is that transactions are, if not completely open, far more transparent and accountable due to the post and hold requirements and the bans on credit and quantity discounts.

(Casavant, page 3)

Distributors provide numerous services, from rotating the product on the shelves, to chilling beer at all stages of the supply chain, to dating and coding beer and wine as to age and quality. All of these improve product quality for the consumer. Distributors take back and destroy old beer, absorbing the loss. Distributors carry at least as much of the risk of new or experimental products being rejected by consumers as do retailers, helping to encourage new product development and testing to occur in the market. Many more wine labels, and therefore the product of smaller wineries, are carried, inventoried and made available to the consumer by the distributors, because the size of the distributorship allows a greater inventory to be maintained and economies of scope to be achieved.

Important to the goals of the statutes, the distributors collect and return taxes efficiently. In sum, without the restraints built into the current regulatory system, we could end up with a system that is “efficient” when viewed purely from the point of view of individual businesses in the system but when viewed from the perspective of society in general neither maximizes the public good nor is “fair” in any meaningful way.

Level Playing Field Concept

The concept of a “level playing field” manifests itself in several of the restraints in the current system. As an economist, I would expect elimination of the restraints to result in fundamental changes in the marketing structure for beer and wine. Allowing quantity discounts and granting of credit, as well as eliminating the minimum markup, would have the effect of lowering some prices to some consumers, with attendant increases in quantity consumed and in opportunities for abuse. Further, the larger chain box firms would gain and the smaller mom and pop stores would be at a definite competitive advantage. To the extent the role of distributors is diminished, smaller retailers would be further disadvantaged. Significant inventory costs would be shifted to the retailer, the ability of new smaller wineries or breweries to get shelf space would be decreased, and other similar size-related impacts could be expected.

Without the uniform pricing requirement, service in outlying areas would be curtailed or price, selection and availability would be restricted. The current system essentially cross-subsidizes retailers in more remote areas and smaller retailers, much as electricity, phone service, mail service, highways, and other public utilities are cross-subsidized. One of the lessons learned from Prohibition is that making beer and wine too difficult to obtain will lead to illegal manufacture and sale, and to a disregard for the law. The concept of subsidizing smaller and more retailers to minimize that risk was built into the regulatory system from its inception.

Allowing volume and credit discounts, or central warehousing, could essentially bring back the “tied houses”, with the result being significant pressure to increase the volumes of beer and wine sold by, among other things, reducing the price. This of course would lead to increases in abusive consumption, such as more availability of alcohol to our youth. None of these outcomes correspond with the express goals of these regulations.

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Related to the level playing field are regulations implementing the law prohibiting distributors or suppliers giving “money or money’s worth” to retailers, including the ban on joint advertising. These are intended to preserve the separation of the tiers by outlawing efforts by one tier to subsidize the activities of another tier. Economically, eliminating these restraints would give rise to relationships that influence the retailer as to what is purchased from which distributor or producer.

Further, when retailer activities are subsidized the cost of incurred by retailers in selling beer and wine is reduced. This will inevitably result in increased promotion, particularly price promotion, which translates directly into greater consumption and more abusive consumption. It is my personal experience that, in a college environment such as Washington State University, such promotions are very effective in increasing purchases of beer and wine, including illegal purchases by minors, and in increasing excessive consumption.

In Summary

The material available from the interviews thus far seems to indicate the debate is not about whether these restraints exist but is rather about whether they are effective and at what cost. Private efficiency could be improved by removing some of these restraints, but as an economist I believe the larger concern that needs to be addressed is the impact on social costs that would be caused by the relaxation of these controls? Specific attention should be paid to the Liquor Control Board’s mandate, its effectiveness in enforcing that mandate and the net result on Washington citizens and businesses. My sense is that role is being performed more than adequately at this time; the Three Tier Task Force is being asked to consider what the mandate is, and is the balance between social costs and private firm efficiency appropriate at this time?

There is obviously some disagreement between members of the Task Force as to the balance to be struck between private operational efficiency and the public costs imposed by that efficiency. I cannot, as an economist, make a determination as to what level of public costs should be considered acceptable by Task Force members. Nonetheless, it is patently obvious that social costs are imposed on society as a result of alcohol abuse and that those costs are all too real.

The public costs of alcohol abuse, while varied, include: the accidents and deaths attendant upon drinking and driving; the problems resulting from drinking by our youth and young adults; the health care costs incurred as a result of consumption, such as the costs of dealing with cirrhosis, and as a result of the addictive nature of alcohol; the costs of alcohol-related incidents such as accidents at work, suicide, child abuse (especially by women), spousal abuse, rapes, robberies, and violence on campuses. There are, of course, some health benefits that appear to flow from moderate consumption of alcohol but there is nothing in the literature or in my examination of the markets that suggests the current regulatory system unduly restricts moderate consumption.

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It is also patently obvious to me as an economist that these social costs increase with consumption and that consumption will increase if prices to consumers go down. Finally, it is equally obvious that prices to consumers will go down, and abusive consumption will go up, if private efficiencies are the sole basis for determining the nature and scope of regulations governing beer and wine distribution.

It is the role of the Task Force to make policy recommendations as to the appropriate balance between social costs and private efficiencies. My role as an economist is simply to inform as to the type and magnitude of efficiencies and public costs/benefits that should be considered in making those recommendations. I appreciate the opportunity to offer some thoughts on the issues.

LCB Three-Tier Task Force –
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-----Original Message-----

From: Lostwine [mailto:lostwine@centurytel.net]

Posted At: Wednesday, May 31, 2006 11:25 AM

Posted To: Spam

Conversation: Comments on items under consideration by task force

Subject: Comments on items under consideration by task force

Dear task Force members,

I want to sincerely thank you for your work on this issue and for the opportunity to comment.

You may certainly consider me to be in the camp that feels the system is broken and requires fixing. I believe that the current liquor code has slowly evolved from historical circumstances that are no longer relevant, and has been hobbled in its development by political wrangling, bureaucratic fossilization, and a general lack of vision and imagination. The result is a system, mirrored in 49 other States which is, in my view, largely responsible for the fact that the *American wine industry is losing market share to foreign competitors across every single price point*. Washington as the nation's second largest wine producing State must retake a position of leadership in the free trade of this legal product, and should work to provide a model national wine law.

The Proper Scope of Alcohol Trade regulation

The societal goals of alcohol regulation that apply to the manufacturing, sales and distribution sectors (as opposed to the education, behavioral and public health spectrum) are extremely simple; Prevention of access to minors and intoxicated individuals, collection of taxes, and the empowerment of the State with sufficient legal authority to ensure compliance. Simplification of regulation in this sector will encourages full compliance, will ease enforcement, and will maximize collection of tax revenue by discouraging trade in alcohol outside of the legal channels, particularly as regards imports.

The Three Tier System

From my perspective the current system, in which it is considered necessary that the three tiers be separate and distinct, is much more easy to understand in terms of a system designed to protect wholesalers rather than one serving the stated policy goals. I have had WSLCB staff explain premises of the current system in terms of the distant past (e.g. the Al Capone days of prohibition and the era of the trusts). These reasons have long become irrelevant. We now have anti trust and anti racketeering statutes that did not formerly exist. And as far as prohibition, is it really any surprise that there were legal problems back then? To paraphrase a famous gun lobbying group "If the alcohol business is outlawed, only outlaws will be in the alcohol business". Why do distributors and producers, or, for that matter distributors and retailers, need to have separate ownership? Many producers self distribute. Many retailers of other products use central warehousing. In our case,

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distributors are so inefficient that we simply can't afford them. Carried to the current absurd extreme we producers find ourselves in a position where we are even prevented from sending (at our expense) product to retail licensees via common carrier such as UPS or Fedex. Such is not only common in business logistics today, it is, in the case of packages the size, shape, and weight of cases of wine, the rule almost without exception. Why are our wholesale customers required to take the time and effort to arrange and pay for shipping, except that this acts as a poison pill, a thorn in our side and a concession to the wholesale tier? Consider how absurd this situation is when at the same time we are allowed to send wine to unlicensed consumers via common carrier, but not to people who have been investigated and licensed by the State for the purpose of re-selling alcohol.

And then there is the cost to the consumer. How can the State legislature not be embarrassed when a deputy attorney general argues in a lawsuit that the States knows its three tier system costs consumers unnecessarily but that such is desirable because high prices discourage overconsumption? Especially when the judge immediately recognized that the additional costs could be returned to the taxpayer rather than supporting the margins of the ever shrinking number of wholesalers.

Can we imagine a better system? Easily. Simply strip away the unnecessary layers of trade protectionist regulation. Create a distribution tier that exists only for the purpose of - here's a shocking concept - providing an efficient, reasonably secure, and most importantly, cost effective means of delivering wine and beer. The distribution tier should not be prevented from owning interests in producers or, alternately in retailers sales outlets, from competitive pricing, or from any other usual and customary practices or economies of scale common to modern trade in other legal products. More importantly, there should be no reason whatsoever that a non producing, non selling distributor should exist, except to provide a value added service in facilitating delivery and placement of product between a willing seller and a willing buyer.

Direct to consumer Shipping

In the last Legislative session Washington went from a being reciprocal State, which was willing even to forego tax collection, for the sake of supporting its wine industry and the cause of free trade, to being a permit State on the forefront of creating market barriers through red tape. A year ago we could ship to 17 States without any special permits. As of today, we can feasibly ship to three: Oregon, Ohio and Florida. We further intend to obtain a permit to ship to California. Oregon and Ohio do not require the shipper to pay any taxes for limited quantities. In Ohio taxes are the responsibility of the consumer. Florida has probably come the closest to a simple balanced direct ship law, currently requiring only adult signature for delivery confirmation, and payment of taxes for the months in which product is shipped. California requires an annual permit and tax reporting, but the permit fee is a reasonable \$10.00 per year. We just cannot afford to pay 30 or 40 annual State permit fees together with bearing the cost of compliance paperwork in order to build a small

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interstate market into a, hopefully, larger one. And Washington? Simply stated, were we an out of State producer, we would no longer ship to Washington given the new law.

How is the consumer served by all of this? Most of our customers enjoy small production distinctive wines. We don't serve them by limiting the ability of small out of State producers to access our markets. We don't serve ourselves by limiting our customers enjoyment of fine wines from out of State. Nor does this bureaucratic approach provide a model that can be adopted by other States thereby allowing Washington producers access to their markets.

Can we imagine a simpler system? Certainly. Consider Florida. Taxes paid only in months tax is due - who is served by reviewing no activity monthly reports? No permit required - we already have a Federal license, so why do we need a State license for the exclusive purpose of interstate commerce? No permit fees - why should we pay a State permit fee when we pay taxes to Florida for the wine we ship? Adult signature requirements - no problem we pay for signature service on every package we ship and we get a digital facsimile for our files. No state label approvals required - the whole purpose of the Federal Certificate of Label Approval (COLA) process is for interstate sales.

If we can't imagine an improvement to the overall system can we not at least provide a stripped down and workable "under the radar" sort of exception for small producers trying to create a viable market? Considering what our industry, and Washington State consumers, have just lost in the demise of the reciprocal system, perhaps an exception of an annual aggregate of 20, 50 or 100 cases of wine could be allowed. Please think for a moment about how much time, effort and money you personally could afford to invest in the *possibility* of making a few hundred dollars in sales in a given State in a given year.

Thank you once again for considering my comments and for the many hours of work and thought you are putting into this effort. This single area of regulation represents, without doubt, the greatest threat to our long term viability of our business, and the greatest opportunity for ensuring our success. Make no mistake, we desperately need your assistance here. Washington wines are world class and we, as the home team, don't fear competition from anyone. With your help we can surely succeed.

Very truly yours,

John E. Morgan
Manager
Lost River Winery, LLC

**Comments Received from
Task Force Members Regarding Materials
prepared for August 3 Task Force Meeting**

From: Mary Segawa
Sent: Thursday, July 27, 2006 10:42 AM
To: Jill Satran
Subject: Additional information

Hi, Jill,

I have reviewed most of the materials for next week's meeting, and I have a comment about the price posting and hold issue. On page 34 of the "Meeting Materials" sent July 26th (pdf. of PowerPoint presentation), I believe another impact of the price posting and hold for the State is "Reduces economic, health, and social costs associated with misuse of alcohol by reducing problems associated with overconsumption." I also think there are sufficient studies to show increasing price does decrease overconsumption, and that stating is as "possible" reduction in overconsumption dilutes the effect.

Thanks.

Mary

Mary B. Segawa
Executive Director
TOGETHER!
PO Box 5325
Lacey, WA 98509-5325
(360) 493-2230 ext. 12
msegawa@ThurstonTOGETHER.org
Web site: www.ThurstonTOGETHER.org



July 28, 2006

Nate Ford
c/o Sterling Associates, LLP
4820 Yelm Highway SE, Suite B - PMB 148
Lacey, WA 98503

Dear Mr. Ford:

We have been following the work of the Task Force closely and appreciate your hard work in attempting to fulfill the legislative mandate. The mandate calls for a fundamental re-examination of the tenets of the state's beer and wine policy – the objective is to move beyond rhetoric and substitute factual and economic analysis. Some of the work of the Task Force has moved toward this objective, but we are concerned that the legitimacy of these efforts has been placed at risk by portions of the recent draft paper on sales and distribution.

Initially, we note a lack of transparency concerning the role of the Liquor Control Board and staff in the preparation of the draft paper. It appears that their role has been substantial. The legislative mandate, however, creates no such role for the LCB. Rather, the mandate calls for the LCB merely to "convene" the Task Force – not to have a role greater than any other participant in creating the recommendations of the task force.

In addition, we recognize that the work of the Task Force is proceeding independent of the related federal lawsuit. However, the objectives cannot be reached by ignoring what happened in the courtroom earlier this year.

The draft paper repeats the assertions of the LCB and presents them as fact, sometimes without even attributing the assertions to the LCB. Generally those assertions are not accompanied by any empirical or other evidence. There is no reference to the fact that these assertions were wholly rejected after a long, objective and detailed examination by the federal court. For the LCB assertions to be put forward without noting the specific conclusions of the federal court is not only misleading, but harmful to the entire process. How can you expect members of the public and stakeholders to believe in the integrity of our process when they see such an incomplete presentation?

I will draw your attention to a few examples: the summary asserts that the "direct and indirect pricing regulations" are "designed, in part, to increase the cost of the product, based on the assumption that price influences consumption . . . and lower consumption in general limits the

misuse of alcohol.”¹ No evidence is cited to support this assertion about the origins of the regulations, and there is none. To the contrary, the federal court found: “Washington does not seek to promote ‘temperance’ by promoting abstention or by reducing overall consumption of beer and wine. Indeed, the state actively promotes its domestic beer and wine industries and seeks to serve overall lawful demand for beer and wine.” Court Ruling at 8 ¶ 11. The court further found that there “is no persuasive evidence that the purpose of any of the challenged restraints was to promote temperance by raising average beer and wine prices.” Page 9 ¶ 16. To the contrary, the court found that the state’s policies “would appear to increase consumption by making it less expensive for consumers to obtain beer and wine at the most convenient and easily accessible locations.” ¶ 15 (emphasis added).

It is insufficient for you to refer to the court’s ruling with the bare statement that the court invalidated the restrictions without including the court’s finding that the justifications proffered by the LCB were invalid.

The draft is also misleading in presenting the LCB’s arguments about why the post and hold system is related to legitimate enforcement objectives. The federal court found that “the state could enforce its below-cost sales law without requiring posting of prices. Most obviously, the state could simply require suppliers and distributors to keep all purchase and sale records on site for inspection by the LCB.” Page 12 ¶ 27 (emphasis added).

The analysis concerning the “level playing field” is also wanting. You repeat the LCB assertion that “without a level playing field, there is greater incentive for the retailer with higher costs to go outside the system to buy the product cheaper.” Again, there is no evidence presented to support this speculation. The federal court found that there is no “persuasive evidence that smaller or more remote retailers would be unable to survive economically without the challenged restraints or that they would otherwise be unable to purchase or profitably sell beer or wine.” Page 13 ¶ 31. The court also found that there is “no persuasive evidence that the challenged restraints play an appreciable role in raising revenue for the state or in ensuring efficient collection of taxes.” Page 14 ¶ 33.

The foregoing is not an exhaustive list of similar references, but illustrative of the issue that causes us great concern. We will seek to supplement the record of the Task Force with all the exhibits and testimony from the federal court trial so that any interested party can have access to the fully contested process that tested (and rejected) the LCB’s assumptions rather than just repeating them.

The LCB and the distributors insisted on a trial that caused the expenditure of millions of dollars in public and private funds and consumed countless hours of the federal judiciary. The LCB cannot pretend now that the results of the trial simply do not exist; nor should this Task Force be used as a forum to re-try the case, which featured the best expert testimony the LCB and the

¹ Later it is said that prices are only “presumably higher.” Draft at p. 4. Can the LCB have it both ways?

distributors could offer. The truth is that there is no continuing need (if there ever was one) for the post and hold system. We note that the draft paper quotes at length the "intent" section of the post and hold regulations added in 1995 (p. 12). You fail to note that this section was proposed by the distributors' trade association. Court Ruling at 7 ¶ 7.

Finally, there are other relevant questions that the Task Force should consider. To date the LCB has been unable to answer these questions:

Has the LCB sought to track pricing and compare it to consumption or abuse patterns in Washington to see if there is any relationship between pricing and consumption or abuse?

If the LCB is concerned about the impact of price upon consumption, why has it made no effort to monitor, much less control, price at the retail level, where consumer purchaser habits could be influenced?

How does the post and hold system create uniformity, in that it allows different distributors to sell the same item at different prices?

If general federal and state laws protecting competition are sufficient for every industry other than the beer and wine industry, why are special rules and regulations relating to competition necessary for beer and wine? For example, the federal Robinson Patman law prohibits discrimination in pricing when it adversely affects competition. Why is this insufficient to secure any "level playing field" that might be deemed important?

Why is there vibrant competition, among large and small participants, in all sectors of the Washington economy that are not subject to "post and hold" requirements, and so little competition in the distribution of beer and wine, which is subject to these requirements?

Sincerely,

A handwritten signature in black ink that reads "Joel Benoliel". The signature is written in a cursive, slightly stylized font. The first name "Joel" is written with a large, looped 'J' and the last name "Benoliel" follows in a similar cursive style.

Joel Benoliel
Senior Vice President and Chief Legal Officer

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

The following written comments were submitted to the Task Force between June 15 and August 2, 2006. These comments were forwarded to Task Force members previously, via email.

1. **David Asia, PhD Substance Abuse Program Coordinator, Skagit County Human Services:** Letter addressed to Jim Sinegal, CEO of Costco expressing concern that elimination of the independent distributor tier could lead to the increased availability, reduced price, and fortification of the alcohol content of alcoholic products generally. Requesting clarification of Costco's position on this issue as a member of the Three-Tier Task Force.
2. **Stephanie Wise, Substance Abuse professional:** Concerned that any deregulation of the current system would increase the amount of alcoholic beverages that are sold in our Washington state communities. This, in turn, will increase the misuse of alcohol by adult problem drinkers and increase the ability of underage drinkers to obtain alcohol. Health and economic impacts of substance abuse are significant and will increase if controls are eliminated.
3. **Martha Fuller, Washington State Sports and Entertainment Facility Operators Association (WSSEFOA):** Recapping the presentation she made to at the 3rd meeting of the Three-Tier Task Force.
4. **Pam Darby, Reducing Underage Drinking (RUaD) State Coordinator, Department of Social and Health Services, Division of Alcohol and Substance Abuse:** Forwarding the *Blueprint for States: Policies to Improve the Way States Organize and Deliver Drug and Alcohol Prevention and Treatment*, a 2006 Report from Join Together, a national policy panel.
5. **Katherine Uhlinger, Youth Social Worker:** Provides data related to the relationship between price and consumption, and costs associated with alcohol abuse and youth consumption. Urges the use of these data in task force deliberations.
6. **Dave Berto, Senior Vice President for Metropolitan Market:** Discusses the impact of current regulations has on business and identifies particular areas of concern, including the prohibition against providing samples in grocery stores, "post off" pricing, minimum markup, and Cash on Delivery requirements, competition from LCB in the sale of beer and wine, and impacts of the "level playing field" approach to regulations.
7. **Jan Gee, President and CEO, Washington Food Industry:** Provides WFI's perspective on the state's involvement in the sale of wine and beer. Asserts the state has consistently priced these products below private retailers and argues the state should withdraw from the sale of wine and beer in state liquor stores.
8. **Mike Abney, President / General Manager, Northwest Grocers:** Supports the positions that will be put forward by the independent grocers representative at the August 3 meeting.
9. **Jay Schiering, McCarthy & Schiering Wine Merchants:** Expresses concern about the small retailer's influence in the policy process and in the direction of the Task Force. Raises issues about the prohibition against offering credit terms to retailers.

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

From: Mary Segawa
Sent: Monday, July 10, 2006 9:48 AM
To: Jill Satran
Subject: FW: 3 tiered meetings

Hi, Jill,

The attached was recently sent to me. David has given me permission to have it shared with the members of the 3-Tier Task Force. Please include it in correspondence distributed to the members of the Task Force. Thank you.

Mary Segawa

From: David Asia [mailto:davidasia@co.skagit.wa.us]
Sent: Friday, July 07, 2006 12:43 PM
To: msegawa@ThurstonTOGETHER.org
Subject: 3 tiered meetings

Mary:

Inspired by your presentation at WASAVP, I sent this to the Costco CEO awhile ago....

David

<<Costco Letter.doc>>

David Asia, PhD

Substance Abuse Program Coordinator
Skagit County Human Services
601 South 2nd
Mount Vernon WA 98273
360.336.9309

FAX 360.336.9323

[Note: Letter begins on following page]

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

David Asia, PhD
17936 Pamela Street
Mount Vernon WA 98274
(360) 424-4206
FAX (360) 428-8717

bluberry@vallevint.com

June 7, 2006

Jim Sinegal, CEO
Costco Corporation
PO Box 34331
Seattle WA 98124

Dear Mr. Sinegal:

I have been following with some interest the reevaluation of Washington State's 3 tiered system designed, in part, to help create the "orderly market" for the manufacture, distribution, and retail sales of alcohol products. I have become a bit familiar with Costco's recent victory in federal court, a victory, which, as I understand it, will contribute to a more level playing field for the distribution of Washington and out of state wines.

I understand, I think, the purpose of the Costco lawsuit. I understand some of the implications for interstate commerce when the trade of one of two similar products is restricted because of the state in which that product was manufactured.

The debate now, however, is far beyond the original intent of Costco's lawsuit. Now, in order to comply with the federal court order, and under pressure from manufacturers on one end and retailers on the other end, the middle tier, or the distribution sector, is under siege.

There are most likely 2 statutory outcomes from the lawsuit:

1. Out of state wines get the same advantage as Washington wines, that is, they may manufacturer and distribute their own products to retail outlets in the state, or
2. In state wines must now also use independent distributors, as required of out of state wines.

As I understand it, there is significant history when it comes to the middle tier of the 3 tiered system, as you know. The rationale for independent distributorship includes, in part, that it serves as a brake on potential collusion between manufacturer and retailer. More important to me, however, is the evidence that the middle tier, independent distributorship, given the nature of a deregulated marketplace, serves to limit the amount of alcoholic beverages, and the percentage of alcohol in those beverages, available to the public.

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

According to the Social Development Research Group at the University of Washington, which has pioneered much of this research, our best evidence on risk factors for alcoholism and drug addiction suggests a strong correlation among:

- increased drug availability (even the perception of increased availability)
- reduced price
- the early initiation of alcohol or drug use
- an increased likelihood of dependence or addiction

Which brings me to the point of my letter:

Is it the intention of Costco Corporation, which has a representative on the task force currently reviewing the 3 tiered system, to advocate for the elimination of the requirement for independent distributorship for all wines? If this is the case, it will only be a matter of time until the middle tier vanishes from other sectors of the alcoholic beverage industry as well, most likely through the courts.

Given the historical evidence, this will most likely lead to the increased availability, reduced price, and fortification of the alcohol content of alcoholic products generally. Remember the research: increased availability, lower price, earlier onset of first use, increased likelihood of dependence and addiction.

Was it the intention of the Costco lawsuit to create a legal, statutory, and economic climate which would result in a marketplace that created an increased risk to public health, especially to the public health of children (remember the early onset of first use...)?

I would certainly hope not. I would hope that Costco, which has remarkably progressive and person centered corporate labor policies (policies which, in many cases illuminate themselves as a model of corporate responsibility) would carry this sense of corporate responsibility into the marketing of alcoholic beverages.

I am a Costco member and would very much appreciate a clarification of Costco's intention regarding the 3 tiered system currently in place in Washington State. I am also interested in knowing what efforts Costco is willing to undertake to limit the potential impacts of the federal lawsuit as they reverberate throughout the statutory climate regarding alcoholic beverages in the state.

Respectfully,

David Asia

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

-----Original Message-----

From: Wise, Stephanie (DSHS/DASA) <wisesv1@dshs.wa.gov>
To: 'scf@liq.wa.gov' <scf@liq.wa.gov>
CC: Tarnish Rau
Sent: Wed Jul 12 12:43:17 2006
Subject: Comment for Three-Tier Task Force

Good afternoon,

I have attached a letter to this email with comments for the Three-Tier Review Task Force. These represent my personal perspective. Thank you!

Stephanie

Stephanie Wise, Region 2 Prevention Manager
DSHS/Division of Alcohol and Substance Abuse
509.225.6254 wisesv1@dshs.wa.gov
Please visit the DASA HomePage at: <http://www1.dshs.wa.gov/dasa>

[Note: Letter begins on following page]

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

Stephanie Wise
701 E. 7th Ave
Ellensburg, WA

98926

(509)925-3733

July 12, 2006

To the Three-Tier Review Task Force:

I am writing to express my very deep concern that the review of the Washington state three-tier system of distributing and selling beer and wine may result in some form of deregulation to the current system.

As a substance abuse prevention professional, grandmother of six children, and concerned citizen, I am especially concerned that to my knowledge the current task force process has not included the review of data that correlates increased alcohol availability and decreased price to misuse and abuse by adults and to early initiation of use by children.

According to the Center for Substance Abuse Prevention, alcohol is the drug of choice among youth in the United States. It is more likely to kill young people than all illegal drugs combined. Each year 1,900 people under the age of 21 die in motor vehicle crashes that involve underage drinking in our country.

Nearly half of all 8th graders in our country report having had at least one drink and over 20 percent report having been drunk. Consuming 5 or more drinks at one time for males or 4 or more drinks at one time for females are considered binge drinking. Nearly 1/3 of all 12th graders have participated in binge drinking.

In addition to the brain damage that can occur in developing brains from drinking alcohol – especially to the areas of the brain that process memory, physical skills, and coordination – people who reported starting to drink alcohol before the age of 15 are 4 times more likely than those who delayed onset of use to become dependent on alcohol at some point in their life.

It seems inevitable that any deregulation of the current system would increase the amount of alcoholic beverages that are sold in our Washington state communities. This in turn will increase the misuse of alcohol by adult problem drinkers and increase the ability of underage drinkers to obtain alcohol. Nationally the alcohol industry makes an estimated \$22.5 billion by selling to underage drinkers and another \$25.8 billion from sales to alcoholics and other problem drinkers, according to a recent report from the National Center of Addiction and Substance Abuse (CASA). And nearly 17.6 million adult Americans abuse alcohol or are alcoholic. Health impacts from misuse and abuse include:

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

- Heavy drinking can increase risk for cancers, especially those of the liver, esophagus, throat, and larynx.
- Heavy drinking can also cause cirrhosis, immune system problems, brain damage, and harm to the fetus during pregnancy.
- Drinking increases the risk of death to all of us from alcohol-related car crashes as well as recreational and job related injuries.

In economic terms, alcohol-related problems cost our country approximately \$185 billion per year.

In our state, the current three-tier system has involved controls that help to minimize the negative impact of alcohol use, and yet we face daunting problems related to substance abuse. We will see our own statistics of abuse and misuse soar, if current controls are weakened.

Consider these Washington state statistics related to substance abuse, identified by the Governor's Council on Substance Abuse:

- An annual economic loss of \$2.54 billion.
- A chemical dependency rate of 68% for inmates new to the adult corrections system.
- Abuse of alcohol and/or other drugs by four out of five youth entering the juvenile justice system.
- 44% of children in foster care have birth mothers who abused alcohol and/or other drugs during pregnancy.

In the substance abuse prevention field and in many families and communities, we work each day to help move towards a culture where heavy drinking is not the norm. We do this to create healthy communities and better futures for our children. There have been huge leaps forward in our prevention science, and we now have the systemic knowledge and skills to effect community-wide change and reinforce norms of responsible use of alcohol. Please help us move in this direction and do not make recommendations that will deregulate the distribution and sales of beer and wine, which in turn will create further negative social, health, and economic impacts in our state.

It would be a pleasure to share more information with you about prevention science, particularly the positive outcomes and reductions in substance abuse that can be achieved through public policy and environmental strategies. Please let me know if I can be of any assistance in the important work you are engaged upon.

Sincerely,



Stephanie Wise

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

From: Fuller, Martha [mailto:MarthaF@Seahawks.com]
Sent: Friday, July 21, 2006 2:39 PM
To: scf@liq.wa.gov
Cc: Jill Satran
Subject: Comment for Three-Tier Task Force

Attached our comments recapping our presentation to the Task Force on June 15. Hard copy of this letter is being sent to the LCB offices in Olympia as well.

Please feel free to call me at 425 893 5005 if you have any questions.

Thanks again for the opportunity to present.

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

July 21, 2006

Members of the Washington State Liquor Control Board Three Tier Review Task Force
C/O Licensing Division, Washington State Liquor Control Board
3000 Pacific Avenue SE
Olympia, WA 98504-3080

Dear Task Force Members:

Thank you again for the opportunity to make our brief presentation to you at the last Task Force meeting on June 15. We appreciated the time you set aside for us on your busy agenda as well as the thoughtful questions and comments you offered in that meeting.

For the record, via this letter we are recapping our key concerns and reiterating our request for your additional consideration of modifications to the current advertising regulations as they apply to the sports and entertainment facilities license holders represented by WSSEFOA.

Although the current advertising regulations were designed to prevent the stifling of competition among brands and manufacturers in our facilities, these regulations have resulted in unintended consequences.

- We are precluded from accessing certain sponsorship and advertising revenues, including naming rights. Current regulations also unnecessarily restrict the structure and elements of our relationships with sponsor and advertisers. As a result, national sponsors and advertisers direct their spending to sports and entertainment venues in other states, where no such restrictions apply.
- Consumer demand drives the selection of alcoholic beverages offered in our facilities. Indeed, in many of our facilities, these decisions are made by the third-party catering and concessions firms who run our food and beverage operations. These firms are not party to any sponsorship or advertising agreements. A wide variety of brands from a variety of producer/manufacturers are offered in every one of our facilities, so it is clear that the currently-allowed advertising and sponsorship relationships have not stifled competition in our venues.
- Often with the support of our alcoholic beverage sponsor/advertisers, our facilities offer a range of programs to maximize the responsible vending and consumption of alcohol. These include extensive training of service staff, security measures including use of alcohol monitors, contract security staff and off duty law enforcement personnel at events, and designated driver programs.

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

- Finally, many of our venues are publicly funded, through their original construction and/or for their ongoing operations. Tapping private sector revenue streams such as naming rights, sponsorships and advertising allows us to minimize current and future requests for public dollars to help maintain our facilities.

Accordingly, we would like to see the current advertising regulations modified for sports and entertainment facility operators to allow us to enter into naming rights, sponsorship and other advertising agreements consistent with our industry standards and provisions acceptable in other states.

We respect the broad array of complex issues related to the State's three-tier distribution system that the Task Force is addressing, and we recognize that our issue is relatively narrower in scope and specific to sports and entertainment facility licenseholders. However, we would very much like to see our issue receive further consideration and would request that the Task Force create a small working group to advance the discussion with us. We are very happy to provide additional data and/or staff support for the working group.

Thank you again for your time last month and further consideration of our request.

Very truly yours,

Martha Fuller

President, Washington State Sports and Entertainment Facility Operators Association

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

From: Darby, Pam (DSHS/DASA) [mailto:DarbyPS@dshs.wa.gov]
Sent: Thursday, July 20, 2006 7:31 AM
To: Jill Satran
Subject: Blueprint for States.pdf

<<Blueprint for States.pdf>>

Something for your information, as well as for the Task Force. Thanks!

-Pam

Pamela Darby
Reducing Underage Drinking (RUaD) State Coordinator
Department of Social and Health Services
Division of Alcohol and Substance Abuse

P.O. Box 45330
Olympia, WA 98504-5330
(360) 725-3720 Fax: (360) 438-8057
darbyps@dshs.wa.gov

<http://www1.dshs.wa.gov/DASA/>

Note: Report has been emailed to Task Force members. It is also available on line at
<http://www.jointogether.org/aboutus/policy-panels/blueprint/>

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

From: keith uhlinger [mailto:kuhling@nwi.net]
Sent: Friday, July 21, 2006 7:00 PM
To: Frederick, Sherry C
Subject: Comment for Three-Tier Task Force

To Whom it May Concern,

Attached, please find a memo I've written for the Three-Tier Review Task Force. Thank you for passing this on to them for the 8/3/06 meeting. It is greatly appreciated.

Sincerely,
Katherine Uhlinger
9368 Benjamin Way
Moses Lake, WA 98837

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

To: Members of the Three-Tier Review Task Force

From: Katherine Uhlinger

Re: Tasks for 8/3/06 Meeting

Thank you for the opportunity to send information to the task force. I appreciate the work you are doing and the data you have made available regarding the task force context and goals.

I am a social worker currently working in a middle school/ high school setting. I am also a parent of 10 and 12-year-old children. When I consider the issues you are addressing, I view them from the perspectives of a Washington citizen, parent and social worker.

You specify ways in which the environment of the 21st century has changed. Despite financial gain seen by the state's tourism and economy from the beer and wine industry and despite educational gains regarding the negative impacts of alcohol, compelling facts and issues remain:

*The on-going societal costs of alcohol use/abuse are well-documented. (1), (3)

*"Alcohol is by far the most used and abused drug among America's teenagers." (3)

*"Underage drinking and adult excessive drinking (the amount adult drink in excess of two drinks a day) accounts for 50.1 percent of the alcohol consumed in the U.S. and 49 percent of consumer expenditures for alcohol, according to an article in the February 26 issue of JAMA, the Journal of the American Medical Association" (1)

*"Decreasing the number of alcohol outlets in a community is closely associated with reduction in rates of alcohol-related youth violence." (2), (6)

*"Holding retailers liable for damage inflicted on others by intoxicated and underage patrons (asserting dram shop liability) promotes responsible server practices and reduces alcohol-related traffic crashes." (2)

*In the Robert Wood Johnson Foundation 2001 Youth Access to Alcohol Survey, "81% of Americans polled supported higher alcohol taxes." (4)

*A study released in 2002 noted: "With alcohol contributing to more than 40 percent of urban traffic fatalities, controlling access to alcohol, penalties for violations of liquor laws, stricter licensure requirements and random sobriety checkpoints are four of the most important ways by which states and cities might be able to lower alcohol related traffic deaths." (5)

*Several reports cite the relationship between alcohol outlet density/location and alcohol related problems incurred by the community and larger society. (6)

LCB Three-Tier Task Force –
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(Uhlinger, Pg.2)

As you approach your upcoming tasks of identifying and discussing potential improvement alternatives and deciding on priorities for further research/analysis, I strongly urge you to add the above information to your working frame of reference. The cited sources provide additional, related information.

I am proud to live in a state that has enacted such strong taxation on alcohol and tobacco. We need to maintain this health-promoting standard and also keep on the table other key issues such as keg registration, outlet density restrictions, maintaining strict licensing practices, dram shop liability, responsible beverage service and sales and advertising restrictions.

Thank you for your time and for your efforts to uphold the state's policy goals and improve the health of Washington's citizens.

Sincerely,

Katherine Uhlinger

9368 Benjamin Way

Moses Lake, WA 98837

- (1) <http://alcoholism.about.com/library/nosearch/n030226.htm>
- (2) http://www.alcoholpolicymd.com/alcohol_policy/effects_ep.htm
- (3) http://www.alcoholpolicymd.com/alcohol_and_health/alcohol_and_youth.htm
- (4) <http://www.alcoholfreechildren.org/en/stats/community.cfm>
- (5) <http://www.rwjf.org/newsroom/newsreleasesdetail.jsp?id=10187&gsa=1&print=true>
- (6) <http://www.resources.prev.org/alcoholoutlet.htm>

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

From: K. Berto [mailto:soundview@wavecable.com]
Sent: Monday, July 31, 2006 8:51 AM
To: Reams, Susan A
Cc: jangee@wa-food-ind.org
Subject: Comment for Three-Tier Task Force

TO: Members of the Washington State Three-Tier Review Task Force

My name is Dave Berto. I am the Senior Vice President for Metropolitan Market with offices at 4025 Delridge Way SW, Suite 210, Seattle, WA 98106. I can be reached at 206-923-3701 or via email at dberto@metropolitan-market.com. Next month, I will be celebrating 46 years in the retail food industry, having served in Washington, Oregon, and California as well as throughout many of southeastern states.

The purpose of this message is to provide you with my thoughts and concerns as your Task Force moves forward in consideration of the meaning and impact for all participants in the alcoholic beverage industry in Washington State, including our ultimate consumers, following the recent court decision relative to the "Costco lawsuit." As an independent food retailer, my interests are primarily related to the distribution and sale of beer and wine in our state. Currently, we have a unique opportunity to work together to craft new regulations, policies, and procedures at all levels that will remove inefficiencies and inequities from our system.

The world has changed many times over since the Washington State Liquor Control Board was established with its mandates and priorities so long ago. Our customers now travel the world and have developed increasingly sophisticated palates, enjoying a broad variety of foods, wines, and beer from around the world. Through the wonders of technology, our ability to track the movement and sale of inventory has improved remarkably, allowing for improved accountability.

Today, we face two significant barriers to efficient business practices with respect to the distribution and sale of wine and beer in our stores. The first is our inability to provide responsible, controlled product samples to our customers, as is common practice in so many other states including those contiguous with ours. In a business where even an established well known label can vary with vintage, our customers are frequently forced to make uninformed decisions about the products they wish to purchase. We can do better than this, while still protecting the principles and values we all believe in. A second significant inefficiency is the "post off" pricing, minimum markup, and Cash on Delivery requirements. These practices create unnecessary administrative burdens on everyone, stifle competition, and result in higher retail prices. Requiring retailers no lower than delivered costs and allowing the free market to dictate payment terms seem to be realistic alternatives in today's world.

The most impactful inequity we experience in today's system here in Washington State is unfair competition from the Washington State Liquor Control Board's own retail outlets where it is not unusual to see items sold at price points lower than our distributor's purchase price, which is controlled by the very same WSLCB. This practice puts the WSLCB in the patently unfair position of being both regulator and competitor, a clear conflict of interest. If the state wants to remain in the retail business, as I think they should, they must limit themselves to the sale of distilled spirits not available through the thousands of private retail sector stores in the state.

A second potential inequity can be avoided if the Task Force considers the need for small independent retailers throughout the State of Washington to compete with the large retail chains on a level playing field. We need the opportunity to accept direct shipments into warehouses for subsequent distribution to our individual stores in this state and, hopefully, your Task Force will consider and recommend that option with a bias toward preventing the potential for predatory practices that could stifle competition by consolidating retail power in the hands of the few.

Thank you for considering my concerns. Please feel free to contact me as necessary.

Dave Berto

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

From: Jan Gee [mailto:jangee@wa-food-ind.org]
Sent: Monday, July 31, 2006 8:34 PM
To: Reams, Susan A
Cc: Kevin Stormans; Bob Broderick
Subject: Comment for Three-Tier Task Force

I am Jan Gee, President & CEO of the WA Food Industry. I submit the following information for your consideration. Attached is our view of the pricing policies of the LCB over the years and it is our opinion that they have consistently priced their product below the market average. ***You must ask yourself why they have had this policy if it is not to sell as much product as possible rather than providing a convenience to the consumer?***

The other question I think is very pertinent to this discussion is ***'If the LCB were not unfairly competing with the private sector in the sale of wine and beer, would the state be facing this legal challenge and how many issue under consideration by the Task Force would still be under review.'***

We challenge a number of statements made in the documents prepared for the Task Force's meeting this week both in the pricing document and the competition with the private retailers. There have been a number of legislators interested enough in this issue that they have done their own unscientific research on the issue of the unfair competition by the state. I would ask each of you to do your own research this week and go to a variety of private retailers - large box stores, independent grocers, convenience stores and wine shops and take note of the prices listed on the LCB's top 100 wine list. Then go to the state liquor stores and compare their prices. We believe you will find that because the LCB is not required to meet the same pricing and shipping requirements of the private sector that their pricing will almost always be below market. Is this promoting the consumption of wine or providing the consumer with convenience and pricing? This is a fine line.

We believe it is time for the state to restrict its retail business to that of the monopoly sale of spirits and let the private sector compete on a level playing field with one another.

Thank you for your consideration of these issues.

Jan Gee, President & CEO

WA Food Industry

253.209.5079

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006



Dedicated to protecting, promoting and supporting the interests of the food industry

Washington State Wine Pricing History

From the perspective of the grocery industry

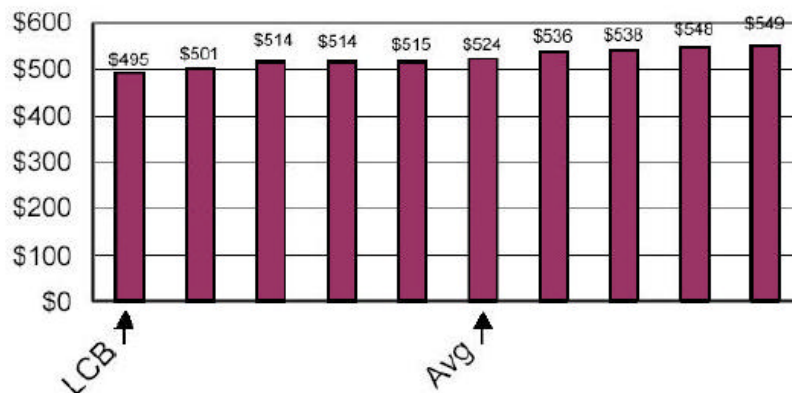
Wine pricing in Washington State should be considered in three phases:

1. Analysis 2003. After years of stalling on the question of whether state stores were competing unfairly, the LCB hired an outside consultant to evaluate prices. The December 2003 study by Dave Pavelchek of Washington State University (which can be found at <http://www.liq.wa.gov/publications/WineSurveyFinalReport.pdf>) was released at the beginning of 2004 and as presented in our newsletter:

Just as WFI members have been contending for many years, a new study from the Washington State University Social and Economic Research Center confirms that the State Liquor Stores are able to use their advantages under the state laws, to sell wines at lower prices than the supermarkets. Working with Bob Broderick from WFI member Associated Grocers, the Liquor Control Board commissioned the study to finally get at the truth.

When the study looked at prices for 64 different bottles of high volume general market wines found in eight stores from major grocery chains in Pierce and Thurston Counties, the State Liquor Stores total price was 5.5% below the average and 21% lower when store membership pricing was eliminated. "

Total Price of 64 Items at 8 Stores

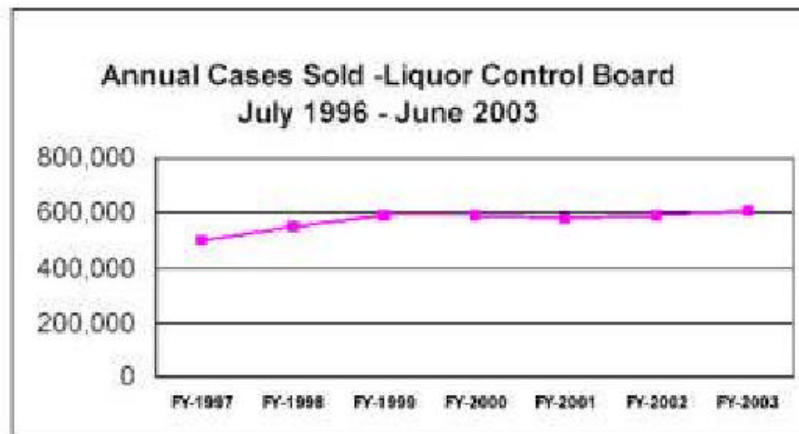


LCB Three-Tier Task Force –
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It is important to note that the sampled private stores only included two stores from each of four major grocery chains (a “big box” store was included in some of the comparisons but not the above chart). The chain prices would obviously be lower than what many smaller retailers can charge.

The agency then did its own internal study of the top 100 selling wines and found a 12% price advantage for the state stores.

2. First Solution 2004: The Liquor Control Board continued to argue that pricing was not a problem because their historic 10% share of the market has remained unchanged over the years. However, because it was beginning a new multi-year wine sales strategy system wide, the Board voted on July 14, 2004, to phase in over the next year an increase in the price on any of the top 100 selling wines that were below market prices. They called this the short-term strategy and agreed that long-term they would increase prices on any wines necessary to keep their total market share from exceeding 10% (there was a major disagreement over whether the short-term strategy was to continue in effect regardless of sales).



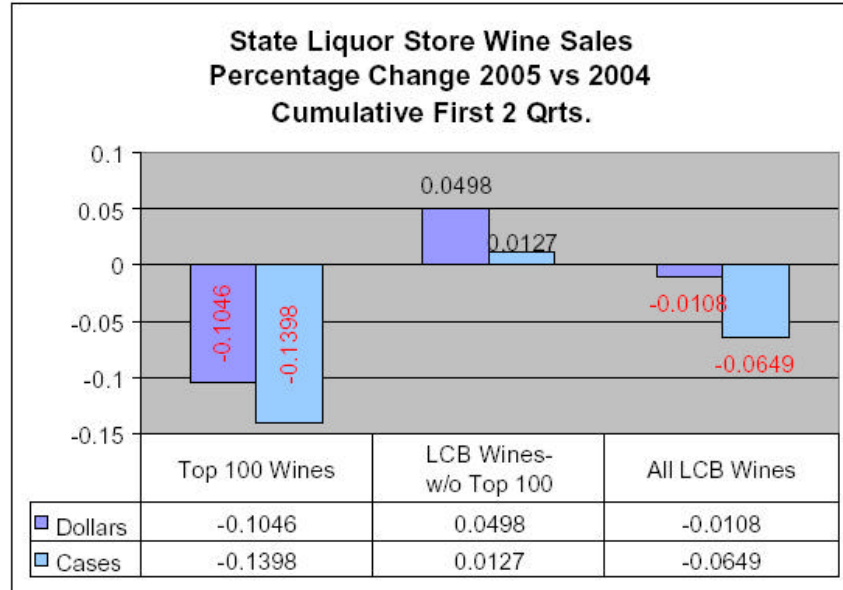
3. Second Solution 2005. After raising wine prices of the top 100 wines to a level comparable to supermarket prices, the State Liquor stores saw a 10% drop in sales of those wines. Faced with declining revenue the Washington State Liquor Control Board unilaterally changed its wine pricing strategy at its August 10, 2005, meeting and as reported by WFI:

You may recall that last year two separate studies documented that the State liquor stores sell wine at prices that average 6% to 12% less than supermarket prices. They are able to do this because the state is not bound by the wine pricing laws that set prices for the private sector.

As a result of the studies the LCB directed that prices for the top 100 wines should be adjusted to supermarket prices (still lower than what smaller stores can match) and these changes were phased in with the final adjustments taking place on July 1. The LCB also adopted a long-term strategy of keeping all state liquor store wine sales at 10% or below total state sales.

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Effective October 1 the LCB rescinded the price adjustments and instead raised its mark-up on all wines from 38% to 43% - a 7.6 percent increase. As a result, the top 100 wines will go down in price but the other 55% of wines sold (65% of dollar sales) will go up in price.



Why is the state competing in the sale of wine and beer when it is conveniently available to the public through private sector retailers?

- The same taxes are collected on a bottle of wine regardless of the purchase through a private retailer or competing state liquor store.
- Albertson's did an internal study of comparing their wine sales on the top 100 selling wines that were identified by the LCB in #2 above and sold in Albertson's and found that their increase in sales were in direct correlation to the LCB's reduction in sales. The state likely did not lose any tax revenue from the sale of wine during this period.
- With the revisions in the "direct shipment to retailers" law, all small wineries now have access to any private sector retailer. Inability to access the private marketplace through a wholesaler has historically been an argument against removing wine from the state control stores.

The State of Washington should concentrate its resources on sale of only spirits and the regulation of the private sector in all licensing and marketing activities of alcoholic beverages. The diversion of these resources to directly compete with the private sector and the conflict of interest of regulating its competitors should finally come to an end. The state should only be in the business of providing a product or service not available through the private sector at an orderly and reasonable manner.

LCB Three-Tier Task Force –
Written Comments Received Between June 15-August 2, 2006

From: Mike Abney [mailto:mike.abney@nwgrocers.com]
Sent: Thursday, July 27, 2006 4:03 PM
To: Frederick, Sherry C
Cc: jangee@wa-food-ind.org; Bob.Broderick@nwgrocers.com
Subject: Three-Tier Review Task Force

Ladies and Gentlemen of the Three-Tier Review task Force,

Northwest Grocers, representing independently owned Thriftway Stores and Red Apple Markets, asks you take full consideration of the issues that will be presented by our representative at your August 3rd meeting. The 60+ stores represented by Northwest Grocers support the positions our representative will put forward at that meeting.

In light of recent Federal Court decisions and the certainty of regulatory changes in the beer and wine category, it is imperative that Independent Retailers have your attention and that a fair marketplace is a result of your efforts. The family held small business owner is the life blood of the economy for the state of Washington. Please, work to establish a business environment that provides a fair and equitable environment of competition for those owners.

Respectfully,

Mike Abney

President / General Manager

Northwest Grocers

12658 Interurban Avenue South

Tukwila, WA 98168

Direct: 206-315-4401

Cell: 206-276-7956

Fax: 206-315-4439

mike.abney@nwgrocers.com

From: Jay Schiering [mailto:jay.schiering@comcast.net]
Sent: Wednesday, August 02, 2006 1:32 AM
To: Reams, Susan A
Subject: Comment for Three-Tier Task Force

Dear Steve,

Is it really so surprising that you've received only one response?

Those of us little guy retail stakeholders really have no voice. It's the price of being small (my \$3 million dollars a year in gross sales is a big deal to me, but chump change at best to the WSLCB or Costco).

In order to "compete" I need a "level playing field." That means having credit terms like any other real business in The Good Old USA. But I forget, wine is a controlled substance, like prescription drugs, not subject to normal rules. We're concerned with temperance, promoted by the three tier system, championed by the Wine and Beer Wholesalers' Association. Can you say "vested interest?" Explain to me again, in any possible rational way, why wholesalers get credit terms but retailers do not? Why the WSLCB gets quantity discounts but everyone else does not? Level playing field? You can dress up a pig in a skirt and lipstick, but it's still a pig!

Credit terms are deemed a "low priority." Why? Because the WSLCB gets to play by a different set of rules. Costco sells a whole bunch of stuff other than wine. (Imagine the terms Costco gets on all that other stuff! Subsidizing their wine program doesn't take an advanced degree in mathematics to understand). Me, I sell wine, that's it. The idea that if Costco "wins", we throw out postings, we allow quantity discounts and credit terms, that this will hurt the small retailers, is ludicrous. It's the wholesalers and grocery chains that are "concerned." Follow the money!

You don't need a weatherman to tell you which way the wind's blowing. So we'll see how the heavyweights duke it out. As Mr. Benoliel implies, the lack of transparency is obvious to all but the blind, because the blind see the world through opaque lenses.

If this email ever gets to the ENTIRE Task Force for consideration, I
Will be both pleased and pleasantly surprised.

Kind Regards,

Jay Schiering
McCarthy & Schiering Wine Merchants

on 8/1/06 2:29 PM, Steve (Water to Wine) at steve@watertowineshop.com
wrote:

Hi everyone,

I have gotten feedback from one person on the last email concerning the upcoming Task Force Meeting. I had expected a few more interested parties to step up with some responses. There is still a day to let me know your thoughts so you can be heard.

Attached are two letters received about the Issue papers.

Let me know.

Thanks

Steve

LCB Three-Tier Task Force –
Written Comments Received Between August 3 to September 11, 2006

The following written comments were submitted to the Task Force between August 3 and September 11, 2006. These comments were forwarded to Task Force members previously, via email.

1. **Joe Gilliam, President, Northwest Grocery Association (NWGA):** Advises the task force to take a leadership role in recommending to the Legislature an approach for addressing the issues in the Costco lawsuit. Recommends specific modifications that respond to the district court ruling on post and hold, uniform pricing, delivered pricing, minimum mark up, volume discounts, ban on credit sales, central warehousing, and ban on retailer-to-retailer warehousing.
2. **Cathy Kelley, coordinator of the Washington State Student Assistance Prevention-Intervention Services Program at Educational Service District 105:** Urges consideration of the impact of underage alcohol consumption. Provides data and statistics regarding the impact of underage drinking in Washington State.
3. **Joe Braun, Former California Wine Importer:** Suggests Washington consider establishing an off sale license that allowed me to sell to individuals by telephone, internet or email, similar to the license structure found in California.
4. **Cameron Fries, White Heron Wine:** Describes limitations imposed on the winery as a result of tied house restrictions.

LCB Three-Tier Task Force –
Written Comments Received Between August 3 to September 11, 2006

From: Joe Gilliam [mailto:joegilliam@ogia.org]

Sent: Thursday, August 10, 2006 3:12 PM

To: Reams, Susan A

Subject: Comment for Three-Tier Task Force

Submitted by Joe Gilliam, President, Northwest Grocery Association (NWGA)

Representing over 85% of the Retail Grocery Market in Oregon And Washington.

I have reviewed the minutes of the first three meetings and on behalf of the Northwest Grocery Association (NWGA) I submit the following concerns and recommendations:

Given the State's position to appeal the Costco decision, the Task Force has two basic choices. To provide a temporary strategy that embraces extending the status quo, or a leadership strategy that can be held in abeyance until the Costco litigation is final.

The status quo strategy relies on two components. First, it accepts the notion that the Costco suit will more than likely be overturned on appeal and major reforms will not be required. The NWGA cannot support this position as the majority of the case consists of findings of fact and there is little legal meat to chew on at the appeals level. You should note that the Legislature chose this route on the direct delivery to retailers issue and drew the ire of the Court. Second, if the case is upheld on appeal and the Task Force has failed to address the key components of Washington's three tier system that are in violation of the United States Constitution, the delay in offering a leadership strategy to the Legislature will cause the LCB to fail in one of its three key charges of its mission statement of ensuring orderly market conditions.

It is the view of the NWGA that this task force should have as its first priority to provide leadership to the Legislature in response to the Court's admonishment,

"The Court's ruling will require (emphasis added) changes in Washington's regulatory system for beer and wine. It is the job of the Washington Legislature and not this Court to determine how to best revise Washington's system in a manner that is consistent with the United States Constitution and federal law. The Court urges the Legislature to do so with dispatch." (Costco Wholesale v. Robert Hoen, et al., Findings of Fact and Conclusions of Law, page 21)

The Leadership strategy requires no Task Force member to surrender their legal positions on any of the issues before the court, but it does require that the Task Force consist of market representatives that have the vision to create a contingency plan that will meet the standards of the Sherman Act if the Costco Suit is upheld.

After reviewing the minutes, it appears that a significant portion of the group would like to adopt the status quo approach. NWGA urges the committee to move forward with a Leadership approach. The NWGA offers the following recommendations:

(Gilliam cont.)

Costco Litigation Contingency Plan

Post and Hold, Uniform Pricing, Delivered Pricing, Minimum Mark Up, and Volume Discounts:

Issue: The Court has rejected the argument that these pricing schemes affect the LCB's mission statement regarding temperance, tax collection, and public safety.

Recommendation: Adopt the Court's position on all pricing issues. However, NWGA believes that all parties share the position to prevent the dumping of cheap beer/wine on the market, so we recommend the Task Force adopt the Court's advice (Findings of Fact and Conclusions of Law document, page 12, (27)) to enforce the existing statute that bans the sale of below-cost beer and wine, and to that end, *"...the state could simply require suppliers and distributors to keep all purchase and sales records on site for inspection by the LCB."* Any other attempts to control pricing will most likely run afoul of the Sherman Act. The Court clearly states that the LCB's position on using price as a modifier to consumption is at best inconsistent. The Court goes further to suggest that if price is a modifier, that the Legislature already has the ability to raise taxes on alcohol.

Ban on Credit Sales:

Issue: This is the most blatant of all the violations to the Sherman Act, but was imposed with good intentions. In 1934 organized crime had a grip on the wholesaling of beer, wine, and spirits. This group used the concept of credit to leverage forcible ownership of retail establishments to expand their illegal operations. However, 70 years later the ban on credit sales serves no purpose in meeting the mission statement of the LCB. No evidence in the Costco suit was offered to the contrary.

Recommendation: Any attempt to regulate the credit terms between individual companies will be at risk of violating the Sherman Act. NWGA offers two recommendations;

- 1) Remove all references to banning credit terms and let the market determine credit terms as it does with all the other products in the food and beverage markets. In no case should the State require credit to be offered to every retailer regardless of their credit risk. There will be cases where a retailer will not have the financial depth to qualify for credit.
- 2) For a finite period of time the State should provide an interest free financing mechanism to wholesalers, or a phase in period, to mitigate the transition from cash to credit. This should be done regardless of the outcome of the Costco litigation.

Central Warehousing:

Issue: This issue may be the strongest argument that the Tied-House laws do not affect the LCB Mission Statement. Whether the beer and wine is delivered at store level by distributors, or from a retailers central warehouse, the affect on temperance, tax collection and public safety is absolutely zero. It is invisible to the public. Wholesalers may oppose the competition from manufacturers that choose to ship direct, but any attempt to prevent such competition would be in violation of the Sherman Act and the Court's explicit ruling. The real world affect will be even less as many retailers of differing sizes and geographical

LCB Three-Tier Task Force –
Written Comments Received Between August 3 to September 11, 2006

(Gilliam cont.)

locations will choose to continue delivery from wholesalers that can offer cheaper, and more efficient means of delivering product.

Recommendation: Leave delivery issues to the free market.

Ban on Retailer-to-Retailer Sales:

Issue: This issue is the only issue turned down by the Court and Costco did not offer a great deal of evidence to support their claim

Recommendation: Leave the ban in place.

Submitted:
Joe Gilliam
President,
Northwest Grocery Association
8565 SW Salish Lane, Suite 100
Wilsonville OR 97070
503.685.6293
joe@nwgrocery.org

LCB Three-Tier Task Force –
Written Comments Received Between August 3 to September 11, 2006

July 27, 2006

To: Members of the Three-Tier Review Task Force

I recently learned of the Washington state three-tier system review. I have been reading about this process in an effort to educate myself, so I have a very basic understanding of the current situation.

As a previous school Student Assistance Counselor and now a coordinator of the Washington State Student Assistance Prevention-Intervention Services Program at Educational Service District 105, I feel this is an important issue and there are many facts to consider as this review is taking place. Decisions made have a potential to have far ranging effects in several areas, both on the humanistic side of things and the economical side of things. As you gather and evaluate information, I ask you to consider the following data when making your recommendations.

Tragic health, social and economic problems result from youths' consumption of alcohol, by far the most widely used drug by that age group in our society. Underage drinking is a causal factor in a host of serious problems: homicide, suicide, traumatic injury, drowning, burns, violent and property crime, high risk sex, fetal alcohol syndrome, alcohol poisoning, and the need for treatment for alcohol abuse and dependence. In 2001, the cost of underage drinking to the citizens of Washington alone was \$1.4 billion. Translated, that is \$2,432 per year for each youth in the state. (1)

In the 2004 Washington State Healthy Youth Survey, 30 day alcohol use is reported as follows:

GRADE	12th Grade	10th Grade	8th Grade
Percent of students reporting use.	46.2%	32.6%	18%

New research coming out about adolescent brain functioning is very clear. Aaron White, an assistant research professor in the psychiatry department at Duke University and the co-author of a recent study of extreme drinking on college campuses reports, "There is no doubt about it now: There are long term cognitive consequences to excessive drinking of alcohol in adolescents...We definitely didn't know five or 10 years ago that alcohol affected the teen brain differently." (2) Teenage alcohol consumption is a big concern and was recently the focus of a nationwide campaign, with Town Hall meetings going on across the nation.

As I understand it, state policy around alcohol distribution has three goals:

- 1) Foster temperance/ promote moderation in consumption of alcohol
- 2) Assure controlled, responsible and orderly marketing of alcohol
- 3) Promote the efficient collection of taxes.

LCB Three-Tier Task Force –
Written Comments Received Between August 3 to September 11, 2006

(Kelley, continued)

In essence, these laws impact the availability or lack of alcohol to adolescents among other things.

As you examine all issues connected to this review, please consider the impact of underage consumption of alcohol. As you consider recommendations, I would hope that any changes made will not negatively impact alcohol availability to minors.

Sincerely,

Cathy Kelley

(1) *Underage Drinking Training Enforcement Center* Web site:

<http://www.udetc.org/UnderageDrinkingCosts.asp#Top>

(2) Butler, K. (2006, July 6). *Teen drinkers sap brainpower*. Seattle Post Intelligencer. p C3

(See “Community Facts for Yakima County” at end of comments.)

LCB Three-Tier Task Force –
Written Comments Received Between August 3 to September 11, 2006

From: Joe Braun [mailto:cj5braun@mac.com]
Sent: Monday, August 21, 2006 1:01 PM
To: Reams, Susan A
Subject: Comment for Three-Tier Task Force

Hello,

I recently moved from California to Washington. (I can see the eyeballs rolling now). Anyway, I had a small wine importing business and held three licenses: (1) an importing license that only allowed me to import the wine. (2) a wholesale license that allowed me to sell to retailers (grocery stores, restaurants, liquor stores etc.) and (3) an off sale license that allowed me to sell to individuals by telephone, internet or email.

Numbers (1) and (2) are not unlike the situation in Washington. Number (3) is evidently not allowed in Washington. My office was in my home. I shipped my wine primarily from France and the wine was stored in a facility (not in my home) that was approved by the California ABC. The sales to individuals were to friends and acquaintances developed by networking and wine seminars. Since my operation was relatively small, I was required to submit sales tax returns (BOE 401 EZ) only two times a year. Each sale was evidenced by a sales receipt showing the name and address of the buyer, the type of wine, number of bottles, prices and tax on the resultant sales.

I was required to report the receipt of wine into the US and pay the tax calculated on the value of the shipment and when the wine arrived in the state of California I also paid a tax. I received a tax form (BOE 501 BW) each month that I was required to submit to the Board of Equalization indicating how much wine I had received and a tax was exacted on that amount. Even if I received no wine in the previous month I was required to file the return each month.

Again as a result of the small size of my operation, I was only required to deposit \$1000 dollars in an account payable to the Board of Equalization that would be jeopardized if I failed to submit each of these tax returns on a timely basis. I'm sure as the size of an operation increased, so was the deposit.

Of course, before I was given these three licenses, I had to submit to an extensive background check, facilities inspection etc. I also had to have a basic permit issued by the BATF. The ABC only allowed a certain number of off sale licenses to be issued in each county.

Since your task force is reviewing the three tier system in Washington, I thought I would submit this information and request that you consider a similar license, or perhaps a waiver to the laws that exist in the State of Washington that would allow a similar operation in Washington. Due to size of my operation and the exclusive nature of the product, I didn't think it diluted the efforts of retailers, distributors or importers. If you require any further information please feel free to contact me and I would be happy to supply what I know from my side of the equation.

Sincerely,

LCB Three-Tier Task Force –
Written Comments Received Between August 3 to September 11, 2006

Joe Braun

172 N Lyter Avenue
Port Townsend, WA 98368
360.379.9969
cj5braun@mac.com

LCB Three-Tier Task Force –
Written Comments Received Between August 3 to September 11, 2006

From: whiteheronwine@gmail.com [mailto:whiteheronwine@gmail.com] **On Behalf Of**
White Heron Cellars
Sent: Monday, September 04, 2006 3:54 PM
To: Reams, Susan A
Subject: comment for three tier task force

To the members of the task force,

As a winery I believe the following should be allowed. I should be able to hire a chef from a restaurant and have said individual prepare a meal at my winery. I should be allowed to advertise which restaurant the chef comes from. I understand that laws dating from prohibition were designed to keep organized crime from continuing its role as producer, wholesaler, and retailer. I do not believe that working with a restaurant in this day and age constitutes collusion – I am merely trying to show my wines as they should be shown – consumed with food in moderation. Thank you for your attention to this matter.

Sincerely, Cameron Fries

--

Cameron Fries
White Heron Cellars
10035 Stuhlmiller RD NW
Quincy, WA 98849
509-797-9463
www.whiteheronwine.com

LCB Three-Tier Task Force –
Written Comments Received Between September 14 and September 28, 2006

The following written comments were submitted to the Task Force September 14 and September 28, 2006. These comments were forwarded to Task Force members previously, via email.

1. **Paul Beveridge, Attorney:** Recommends the Three Tier Task Force hear presentations from health experts about the impacts of alcohol consumption, particularly a comparison between abstention, moderation, and abusive consumption. Provides quotes and summaries from health experts citing some potential positive affects of moderate consumption of alcohol.

LCB Three-Tier Task Force –
Written Comments Received Between September 14 and September 28, 2006

From: Joe Gilliam [mailto:joegilliam@ogia.org]

Sent: Thursday, August 10, 2006 3:12 PM

To: Reams, Susan A

Subject: Comment for Three-Tier Task Force

Submitted by Joe Gilliam, President, Northwest Grocery Association (NWGA)

Representing over 85% of the Retail Grocery Market in Oregon And Washington.

I have reviewed the minutes of the first three meetings and on behalf of the Northwest Grocery Association (NWGA) I submit the following concerns and recommendations:

Given the State's position to appeal the Costco decision, the Task Force has two basic choices. To provide a temporary strategy that embraces extending the status quo, or a leadership strategy that can be held in abeyance until the Costco litigation is final.

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"The Court's ruling will require (emphasis added) changes in Washington's regulatory system for beer and wine. It is the job of the Washington Legislature and not this Court to determine how to best revise Washington's system in a manner that is consistent with the United States Constitution and federal law. The Court urges the Legislature to do so with dispatch." (Costco Wholesale v. Robert Hoen, et al., Findings of Fact and Conclusions of Law, page 21)

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After reviewing the minutes, it appears that a significant portion of the group would like to adopt the status quo approach. NWGA urges the committee to move forward with a Leadership approach. The NWGA offers the following recommendations:

(Gilliam cont.)

Costco Litigation Contingency Plan

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Ban on Credit Sales:

Issue: This is the most blatant of all the violations to the Sherman Act, but was imposed with good intentions. In 1934 organized crime had a grip on the wholesaling of beer, wine, and spirits. This group used the concept of credit to leverage forcible ownership of retail establishments to expand their illegal operations. However, 70 years later the ban on credit sales serves no purpose in meeting the mission statement of the LCB. No evidence in the Costco suit was offered to the contrary.

Recommendation: Any attempt to regulate the credit terms between individual companies will be at risk of violating the Sherman Act. NWGA offers two recommendations;

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Central Warehousing:

Issue: This issue may be the strongest argument that the Tied-House laws do not affect the LCB Mission Statement. Whether the beer and wine is delivered at store level by distributors, or from a retailers central warehouse, the affect on temperance, tax collection and public safety is absolutely zero. It is invisible to the public. Wholesalers may oppose the competition from manufacturers that choose to ship direct, but any attempt to prevent such competition would be in violation of the Sherman Act and the Court's explicit ruling. The real world affect will be even less as many retailers of differing sizes and geographical

LCB Three-Tier Task Force –
Written Comments Received Between September 14 and September 28, 2006

(Gilliam cont.)

locations will choose to continue delivery from wholesalers that can offer cheaper, and more efficient means of delivering product.

Recommendation: Leave delivery issues to the free market.

Ban on Retailer-to-Retailer Sales:

Issue: This issue is the only issue turned down by the Court and Costco did not offer a great deal of evidence to support their claim

Recommendation: Leave the ban in place.

Submitted:
Joe Gilliam
President,
Northwest Grocery Association
8565 SW Salish Lane, Suite 100
Wilsonville OR 97070
503.685.6293
joe@nwgrocery.org

LCB Three-Tier Task Force –
Written Comments Received Between September 14 and September 28, 2006

July 27, 2006

To: Members of the Three-Tier Review Task Force

I recently learned of the Washington state three-tier system review. I have been reading about this process in an effort to educate myself, so I have a very basic understanding of the current situation.

As a previous school Student Assistance Counselor and now a coordinator of the Washington State Student Assistance Prevention-Intervention Services Program at Educational Service District 105, I feel this is an important issue and there are many facts to consider as this review is taking place. Decisions made have a potential to have far ranging effects in several areas, both on the humanistic side of things and the economical side of things. As you gather and evaluate information, I ask you to consider the following data when making your recommendations.

Tragic health, social and economic problems result from youths' consumption of alcohol, by far the most widely used drug by that age group in our society. Underage drinking is a causal factor in a host of serious problems: homicide, suicide, traumatic injury, drowning, burns, violent and property crime, high risk sex, fetal alcohol syndrome, alcohol poisoning, and the need for treatment for alcohol abuse and dependence. In 2001, the cost of underage drinking to the citizens of Washington alone was \$1.4 billion. Translated, that is \$2,432 per year for each youth in the state. (1)

In the 2004 Washington State Healthy Youth Survey, 30 day alcohol use is reported as follows:

GRADE	12th Grade	10th Grade	8th Grade
Percent of students reporting use.	46.2%	32.6%	18%

New research coming out about adolescent brain functioning is very clear. Aaron White, an assistant research professor in the psychiatry department at Duke University and the co-author of a recent study of extreme drinking on college campuses reports, "There is no doubt about it now: There are long term cognitive consequences to excessive drinking of alcohol in adolescents...We definitely didn't know five or 10 years ago that alcohol affected the teen brain differently." (2) Teenage alcohol consumption is a big concern and was recently the focus of a nationwide campaign, with Town Hall meetings going on across the nation.

As I understand it, state policy around alcohol distribution has three goals:

- 1) Foster temperance/ promote moderation in consumption of alcohol
- 2) Assure controlled, responsible and orderly marketing of alcohol
- 3) Promote the efficient collection of taxes.

LCB Three-Tier Task Force –
Written Comments Received Between September 14 and September 28, 2006

(Kelley, continued)

In essence, these laws impact the availability or lack of alcohol to adolescents among other things.

As you examine all issues connected to this review, please consider the impact of underage consumption of alcohol. As you consider recommendations, I would hope that any changes made will not negatively impact alcohol availability to minors.

Sincerely,

Cathy Kelley

(1) *Underage Drinking Training Enforcement Center* Web site:

<http://www.udetc.org/UnderageDrinkingCosts.asp#Top>

(2) Butler, K. (2006, July 6). *Teen drinkers sap brainpower*. Seattle Post Intelligencer. p C3

(See “Community Facts for Yakima County” at end of comments.)

LCB Three-Tier Task Force –
Written Comments Received Between September 14 and September 28, 2006

From: Joe Braun [mailto:cj5braun@mac.com]
Sent: Monday, August 21, 2006 1:01 PM
To: Reams, Susan A
Subject: Comment for Three-Tier Task Force

Hello,

I recently moved from California to Washington. (I can see the eyeballs rolling now). Anyway, I had a small wine importing business and held three licenses: (1) an importing license that only allowed me to import the wine. (2) a wholesale license that allowed me to sell to retailers (grocery stores, restaurants, liquor stores etc.) and (3) an off sale license that allowed me to sell to individuals by telephone, internet or email.

Numbers (1) and (2) are not unlike the situation in Washington. Number (3) is evidently not allowed in Washington. My office was in my home. I shipped my wine primarily from France and the wine was stored in a facility (not in my home) that was approved by the California ABC. The sales to individuals were to friends and acquaintances developed by networking and wine seminars. Since my operation was relatively small, I was required to submit sales tax returns (BOE 401 EZ) only two times a year. Each sale was evidenced by a sales receipt showing the name and address of the buyer, the type of wine, number of bottles, prices and tax on the resultant sales.

I was required to report the receipt of wine into the US and pay the tax calculated on the value of the shipment and when the wine arrived in the state of California I also paid a tax. I received a tax form (BOE 501 BW) each month that I was required to submit to the Board of Equalization indicating how much wine I had received and a tax was exacted on that amount. Even if I received no wine in the previous month I was required to file the return each month.

Again as a result of the small size of my operation, I was only required to deposit \$1000 dollars in an account payable to the Board of Equalization that would be jeopardized if I failed to submit each of these tax returns on a timely basis. I'm sure as the size of an operation increased, so was the deposit.

Of course, before I was given these three licenses, I had to submit to an extensive background check, facilities inspection etc. I also had to have a basic permit issued by the BATF. The ABC only allowed a certain number of off sale licenses to be issued in each county.

Since your task force is reviewing the three tier system in Washington, I thought I would submit this information and request that you consider a similar license, or perhaps a waiver to the laws that exist in the State of Washington that would allow a similar operation in Washington. Due to size of my operation and the exclusive nature of the product, I didn't think it diluted the efforts of retailers, distributors or importers. If you require any further information please feel free to contact me and I would be happy to supply what I know from my side of the equation.

Sincerely,

LCB Three-Tier Task Force –
Written Comments Received Between September 14 and September 28, 2006

Joe Braun

172 N Lyter Avenue
Port Townsend, WA 98368
360.379.9969
cj5braun@mac.com

LCB Three-Tier Task Force –
Written Comments Received Between September 14 and September 28, 2006

From: whiteheronwine@gmail.com [mailto:whiteheronwine@gmail.com] **On Behalf Of**
White Heron Cellars
Sent: Monday, September 04, 2006 3:54 PM
To: Reams, Susan A
Subject: comment for three tier task force

To the members of the task force,

As a winery I believe the following should be allowed. I should be able to hire a chef from a restaurant and have said individual prepare a meal at my winery. I should be allowed to advertise which restaurant the chef comes from. I understand that laws dating from prohibition were designed to keep organized crime from continuing its role as producer, wholesaler, and retailer. I do not believe that working with a restaurant in this day and age constitutes collusion – I am merely trying to show my wines as they should be shown – consumed with food in moderation. Thank you for your attention to this matter.

Sincerely, Cameron Fries

--

Cameron Fries
White Heron Cellars
10035 Stuhlmiller RD NW
Quincy, WA 98849
509-797-9463
www.whiteheronwine.com

LCB Three-Tier Task Force –
Written Comments to October 9, 2006

The following written comments were submitted to the Task Force through October 9, 2006.

1. **King County Councilwoman Julia Patterson:** Requesting the chair to oppose any changes to the current laws that would liberalize policies for the sale and distribution of beer and wine that in any way could make alcohol more readily available to youth. Cites a King County Board of Health resolution setting forth a comprehensive set of strategies to reduce alcohol abuse among youth in King County.
2. **Tyler Remington, Concerned Voter:** Recommending the money used to support the task force be used elsewhere.

King County

Julia Patterson
METROPOLITAN KING COUNTY COUNCIL
District Five

September 14, 2006

Mr. Nathan Ford
Three-Tier Review Task Force
3000 Pacific Ave SE
P.O. Box 43080
Olympia WA 98504-3080

Dear Mr. Ford:

As the current chair of the King County Board of Health, I have followed the work of the Three Tier Review Task Force with great interest. The Board of Health has had historical and ongoing involvement in issues surrounding the abuse of alcoholic beverages by underage drinkers.

When the King County Board of Health passed the attached resolution -- No. 00-301, it did so to lay out a comprehensive set of strategies to reduce alcohol abuse among youth in King County.

King County has had some success in reducing underage drinking by being vigilant in encouraging regulation of the industry, education of our youth and the strict enforcement of alcohol laws in our state.

Alcohol is a unique product and should be regulated differently than other products by the state and federal government. The state has primary authority to regulate alcohol and has a responsibility to fight youth access to alcohol and reduce underage drinking. A state based system of alcohol regulation from production through consumption is critical to addressing the issue of access to alcohol for minors.

The enforcement of current state and local laws including but not limited to minimum age drinking laws, zero tolerance laws, laws that restrict the supply and availability of alcohol, administrative license revocations and laws that regulate the sales, marketing

and distribution of alcohol is essential to the effort to effectively combat underage drinking.


The continued regulation of alcohol by the state with regard to the manufacture, importation, sales, distribution, transportation, storage, and retail practices is in the public interest and is central to fighting underage and abusive consumption.

The citizens of our state have been well served by the three-tier regulatory structure that has provided an additional tool for the monitoring and regulation of alcohol sales and distribution. Please do not risk wider use of alcohol by our youth by opening up the liquor laws in our state.

I ask you to oppose any changes in current Washington State law that will liberalize policies for the sale and distribution of beer and wine that in any way could make alcohol more readily available to our youth.

Please keep the strong laws our state has adopted in place that regulate the manufacture, distribution and sale of beer and wine that are designed to discourage underage drinking.

Sincerely,

A handwritten signature in dark ink, reading "Julia Patterson". The signature is written in a cursive, flowing style.

Julia Patterson

KING COUNTY BOARD OF HEALTH

999 Third Avenue, Suite 1200
Seattle, Washington 98104-4039

Carolyn Edmonds, Board of Health Chair

BOH Members:

Richard Conlin
Dow Constantine
George W. Counts
Jan Drago
Carolyn Edmonds
Ava Frisinger
Larry Gossett
David Hutchinson
David Irons
Kathy Lambert
Frank T. Manning
Bud Nicola
Margaret Pageler
Alonzo Plough

BOH Staff:

Maggie Moran

RESOLUTION NO. 00-301 RECOMMENDING A COMPREHENSIVE STRATEGY TO REDUCE UNDERAGE ALCOHOL USE IN KING COUNTY

WHEREAS, every year in the United States, at least 6,000 young people die in an event linked to alcohol, according to a report by Join Together: A National Resource for Communities Fighting Substance Abuse; and

WHEREAS, problems associated with underage drinking in Washington State – including traffic crashes, violent crime, burns, drowning, and suicide - cost \$1.18 billion (in 1998 dollars), according to a 1999 document by Pacific Institute for Research and Evaluation; and

WHEREAS, Public Health - Seattle & King County found in its August 1998 report on The Health of King County that alcohol is a major risk factor in the three leading causes of death among adolescents: (1) motor vehicle crashes; (2) homicides; and (3) suicides; and

WHEREAS, alcohol is the number one illegal drug problem facing King County youth, according to the 1998 Washington State Survey of Adolescent Health Behaviors (WSSAHB); and

WHEREAS, more than 75 percent of King County 10th graders surveyed in the 1998 WSSAHB said it was easy to get beer, wine or hard liquor; and

WHEREAS, according to the same survey, 89% of King County 10th graders did not believe there would be legal consequences from drinking alcohol; and

WHEREAS, alcohol compliance checks showed higher violation rates, i.e., sales to minors, than those resulting from tobacco compliance checks, according to data from the Seattle Police Department and the Washington State Liquor Control Board; and

WHEREAS, the King County Board of Health recognizes community concerns to improve health and provide supportive environments for children and youth; and

WHEREAS, a crucial way to address the involvement of youth with alcohol is to ensure that our youth have activities that engage and involve them, and that demonstrate that we as a community value our youth and their place in our society; and

WHEREAS, the King County Board of Health formed an Ad Hoc Committee on Underage Drinking (comprised of health professionals, state and local governmental representatives, community advocates, substance abuse prevention providers, and youth) that worked throughout 1999 to: (a) analyze issues related to underage drinking; (b) identify what interventions are effective in addressing underage drinking issues; (c) gather information about similar efforts conducted nationally; and (d) develop and prioritize recommendations for the King County Board of Health on actions it can take to decrease underage drinking; and

WHEREAS, at the November 19, 1999 meeting of the King County Board of Health, the Ad Hoc Committee on Underage Drinking presented proposed recommendations for a



Public Health
Seattle & King County

HEALTHY PEOPLE. HEALTHY COMMUNITIES.

comprehensive strategy to reduce underage drinking in King County;

NOW, THEREFORE, BE IT RESOLVED THAT THE KING COUNTY BOARD OF HEALTH:

1. Endorses the creation of an ongoing, broad-based King County Task Force to Reduce Underage Drinking by expanding the membership of the existing Ad Hoc Committee on Underage Drinking to include additional representatives from the alcohol industry, law enforcement, and other relevant organizations, and by applying for grants to add at least one FTE to the Alcohol, Tobacco and Other Drug Prevention Division of Public Health - Seattle & King County to provide staff support for the Task Force and build partnership efforts with community and school-based alcohol prevention programs.
2. Recommends, contingent upon funding for staff support, that the Task Force pursue a culturally-competent, comprehensive strategy to reduce underage alcohol use in King County based upon current research and best practices, addressing as its top priorities measures that will:
 - a. Ensure that King County alcohol licensees/ retailers are aware of minimum purchase age laws and are in compliance by: (1) increasing the number of alcohol compliance checks in King County; (2) supporting Washington State approved and alcohol industry sponsored initiatives (such as TIPS and BAR code); and (3) coordinating efforts; and
 - b. Improve understanding among King County youth and the general public about relevant alcohol-related laws and consequences of underage alcohol use through focus on driver's education efforts by: (1) working with driver's education teachers; (2) collaborating with the State of Washington Department of Licensing (DOL) and Washington Traffic Safety Commission (WTSC) to develop a youth focused driver's manual; (3) ensuring that information regarding youth alcohol laws is available at DOL offices; and (4) ensuring that knowledge of alcohol laws is part of driving license requirements.
3. Recommends, contingent upon funding for staff support, that, as part of its comprehensive strategy, the Task Force also consider the following actions:
 - a. Collaborate with the Washington State Liquor Control Board (WSLCB) and partners to increase enforcement efforts regarding youth who attempt to purchase alcohol by expanding party patrol efforts; and
 - b. Educate youth, parents and the general public about alcohol minimum age purchase laws and consequences by seeking additional funding for alcohol prevention programs in the schools and community, and by informing King County residents about commercial/dram shop liability and social liability; and
 - c. Advocate for additional warning signs to be posted throughout King County by seeking inclusion of "Attention Minors-Identification is Required" signs among mandated WSLCB signs, and by exploring new signage related to underage drinking; and
 - d. Advocate for legislative changes to existing alcohol laws to expand those authorized to conduct alcohol compliance checks to include local public health departments, and to add a mandate that alcohol retailers watch educational videos related to alcohol laws and that retailers who receive an alcohol violation be mandated to take an expanded set of training requirements; and

- e. Work with the WSLCB and other groups to inform citizens and parent groups how to report liquor violations and strengthen efforts to educate the public about alcohol licensees who violate laws regarding sales to minors; and
- f. Examine what is currently being funded through alcohol taxes/licenses such as alcohol excise taxes, alcohol licensing fees, and determine if redistribution is necessary to support additional alcohol enforcement and prevention efforts directed toward underage drinking; and
- g. Help disseminate media literacy materials and expand media literacy training aimed at the general public's ability to evaluate pro-alcohol messages, and help increase alcohol counter-advertising and public education campaigns; and
- h. Seek resolutions and official proclamations from the Board of Health, County and City to increase awareness of underage drinking issues and support public education campaigns such as: April - Alcohol Awareness Month, May/June-Safe Prom and Graduation Events, September - Homecoming and Safe College/University Campus Activities, October - Hands Off Halloween Campaign, and December - National Drunk and Drugged Driving Prevention Month; and
- i. Request that a King County representative work with the WSLCB to ensure alcohol licensee compliance with advertising, marketing and packaging regulations; and
- j. Work with relevant organizations to offer alternative activities for youth such as alcohol - and drug - free music programs, sporting events, festivals, and celebrations; and
- k. Support efforts of parent coalitions to reduce alcohol use by their children; and
- l. Support school-based policies, such as drug-free zones, and support efforts of school-based organizations such as the Washington State Substance Abuse College Task Force; and
- m. Seek partnerships with King County schools and other organizations to expand media literacy efforts, using tools such as "Media Sharp"; and
- n. Support efforts of the King County Traffic Safety Coalition, Kent Drinking Driver Task Force and Eastside DUI Task Force, and collaborate with the WTSC, WSLCB, and local law enforcement to: (1) ensure education and enforcement of existing zero tolerance laws; (2) conduct traffic safety emphasis patrols; (3) uphold impaired driving laws; and (4) ensure responsible beverage service techniques.
- o. Support and emphasize programs and projects that engage and involve youth, and support activities that emphasize their value in our community.

LCB Three-Tier Task Force –
Written Comments to October 9, 2006

From: Tyler Remington [mailto:treming@gmail.com]
Sent: Saturday, September 23, 2006 6:34 PM
To: Reams, Susan A
Subject: Comment for Three-Tier Task Force

THIS PROGRAM IS AN ABSOLUTE OUTRAGE! It is useless to try controlling the sell of alcohol. Even if not a single bottle is sold to an underage person in the state of Washington I guarantee they will still find a way to get it. The problem with the easy access of alcohol by youths is not in the sell to those underage, but in the willingness of those overage to supply them.

This money and manpower could be better spent for University research, pollution cleanup or on consulting to help the Washington State lawmaking body shy away from RETARDED *****
[expletive deleted] PROGRAMS LIKE THIS ONE.

-Tyler Remington
(concerned voter)

LCB Three-Tier Task Force –
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2. **Tyler Remington, Concerned Voter:** Recommending the money used to support the task force be used elsewhere.

The following written comments were submitted to the Task Force on October 11, 2006. These comments were forwarded to Task Force members previously, via email.

1. **David Burman, Perkins Coie:** Provides legal analysis of draft alternatives provided for delivered pricing, price hold and central warehousing. He concludes that the alternatives as described would not survive a legal challenge. All three alternatives narrow the scope of their predecessor regulations but narrowing does not eliminate their anticompetitive nature.
2. **Jeff Becker, Beer Institute:** The Beer Institute is concerned that recommendations from the Task Force to change current statutes while the Costco case is being litigated will result in uncertainty for members and will not provide the legislature the full benefit of the appellate court's ruling. Requests the Task Force refrain from making recommendations on issues currently on appeal.

LCB Three-Tier Task Force –
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(concerned voter)

King County

Julia Patterson
METROPOLITAN KING COUNTY COUNCIL
District Five

September 14, 2006

Mr. Nathan Ford
Three-Tier Review Task Force
3000 Pacific Ave SE
P.O. Box 43080
Olympia WA 98504-3080

Dear Mr. Ford:

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and distribution of alcohol is essential to the effort to effectively combat underage drinking.


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Sincerely,

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Julia Patterson

KING COUNTY BOARD OF HEALTH

999 Third Avenue, Suite 1200
Seattle, Washington 98104-4039

Carolyn Edmonds, Board of Health Chair

BOH Members:

Richard Conlin
Dow Constantine
George W. Counts
Jan Drago
Carolyn Edmonds
Ava Frisinger
Larry Gossett
David Hutchinson
David Irons
Kathy Lambert
Frank T. Manning
Bud Nicola
Margaret Pageler
Alonzo Plough

BOH Staff:

Maggie Moran

RESOLUTION NO. 00-301 RECOMMENDING A COMPREHENSIVE STRATEGY TO REDUCE UNDERAGE ALCOHOL USE IN KING COUNTY

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- e. Work with the WSLCB and other groups to inform citizens and parent groups how to report liquor violations and strengthen efforts to educate the public about alcohol licensees who violate laws regarding sales to minors; and
- f. Examine what is currently being funded through alcohol taxes/licenses such as alcohol excise taxes, alcohol licensing fees, and determine if redistribution is necessary to support additional alcohol enforcement and prevention efforts directed toward underage drinking; and
- g. Help disseminate media literacy materials and expand media literacy training aimed at the general public's ability to evaluate pro-alcohol messages, and help increase alcohol counter-advertising and public education campaigns; and
- h. Seek resolutions and official proclamations from the Board of Health, County and City to increase awareness of underage drinking issues and support public education campaigns such as: April - Alcohol Awareness Month, May/June-Safe Prom and Graduation Events, September - Homecoming and Safe College/University Campus Activities, October - Hands Off Halloween Campaign, and December - National Drunk and Drugged Driving Prevention Month; and
- i. Request that a King County representative work with the WSLCB to ensure alcohol licensee compliance with advertising, marketing and packaging regulations; and
- j. Work with relevant organizations to offer alternative activities for youth such as alcohol - and drug - free music programs, sporting events, festivals, and celebrations; and
- k. Support efforts of parent coalitions to reduce alcohol use by their children; and
- l. Support school-based policies, such as drug-free zones, and support efforts of school-based organizations such as the Washington State Substance Abuse College Task Force; and
- m. Seek partnerships with King County schools and other organizations to expand media literacy efforts, using tools such as "Media Sharp"; and
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Sent: Saturday, September 23, 2006 6:34 PM

To: Reams, Susan A

Subject: Comment for Three-Tier Task Force

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-Tyler Remington
(concerned voter)



1201 Third Avenue, Suite 4800

Seattle, WA 98101-3099

PHONE: 206.359.8000

FAX: 206.359.9000

www.perkinscoie.com

David J. Burman

PHONE: (206) 359-8426

FAX: (206) 359-9426

EMAIL: DBurman@perkinscoie.com

October 11, 2006

VIA E-MAIL

LCB Three-Tier Task Force
c/o Jill Satran
Sterling Associates, LLP
jills@sterling-llp.com

Re: Legal Analysis of Delivered Pricing, Price Hold, and Central Warehousing Draft Alternatives

Dear Task Force Members:

We have been asked to analyze three draft alternatives to be discussed at the Task Force's October 12 meeting. The three alternatives involve delivered pricing, price holds for discounted products, and central warehousing. By addressing these particular alternatives, we do not mean to suggest that any others are valid.

As shown below, each of these alternatives could not survive a legal challenge. All three alternatives appear intended to narrow the scope of their predecessors that were invalidated in *Costco v. Hoen*. The narrowing does not eliminate the basic anticompetitive nature and illegality of these restraints. Among other things, it does not appear that there has been any meaningful consideration of what non-competition purpose these might serve and whether that purpose could be served through alternatives that do not violate federal antitrust law. Moreover, in attempting to narrow the warehousing ban, the proposal would require in-state warehousing, which presents an additional legal problem under the Commerce Clause.

Analysis of the Proposed Modifications to the Invalidated Restraints

Section I of the Sherman Act provides that "[e]very contract, . . . or conspiracy, in restraint of trade or commerce among the several states . . . is hereby declared to be illegal." 15 U.S.C. § 1. As was undisputed in *Costco v. Hoen*, the Sherman Act preempts a state statute where there is an irreconcilable conflict between the federal and state regulatory schemes (most often when the restraint is a per se Sherman Act violation), *Rice v. Norman Williams Co.*, 458 U.S. 654, 659

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(1982), and the statute is a hybrid, as opposed to unilateral, restraint of trade. *Miller v. Hedlund*, 813 F.2d 1344, 1349-50 (9th Cir. 1987) ("*Miller II*"), *cert. denied*, 484 U.S. 1061 (1988). A hybrid restraint is one in which "nonmarket mechanisms merely enforce private marketing decisions." *Fisher v. City of Berkeley*, 475 U.S. 260, 268 (1986) (quoting *Rice*, 458 U.S. at 665 (Stevens, J. concurring)). A restraint on an element of price or service is hybrid if it still allows private parties a role in setting the prices and does not review the reasonableness of those prices. *Miller II*, 813 F.2d at 1351; see Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 226c, at 24 (Supp. 2004).

1. Delivered Pricing

With respect to delivered pricing, the Task Force is considering two alternatives: either eliminating the delivered pricing requirement or maintaining the requirement with different levels of service and allowing for surcharges for fuel or excessive distances. In *Costco v. Hoen*, Judge Pechman has declared delivered pricing invalid for reasons that apply equally to the proposed qualified delivered pricing requirement. The delivered pricing requirement keeps prices uniform where competition would cause them to differ and discourages retailers of all sizes from developing innovative business practices to keep distribution costs low. This restraint allows private parties to set the prices, which the State enforces without reviewing for reasonableness, giving private actors a significant degree of private regulatory power. *TFWS, Inc. v. Schaefer*, 242 F.3d 198, 208-09 (4th Cir. 2001). Under these circumstances, it is settled law that mandatory delivered pricing is a per se hybrid restraint of trade in violation of the Sherman Act. *Miller II*, 813 F.2d at 1347. The number of prices that are stabilized is not a factor in the federal antitrust analysis. Per se violations like this are per se even if only a single price is stabilized.

2. Price Holds for Discounted Products

Rather than eliminating the hold requirement entirely, the Task Force is considering requiring a fourteen day hold only for discounted products. Essentially, this alternative would require manufacturers and distributors to hold all reduced or sale prices for fourteen days. It is transparently intended to deter discounting. Judge Pechman has already found that holding requirements are a clear per se antitrust violation. Regardless of whether the hold applies to all prices or just reduced prices, the hold requirement remains an antitrust violation. Reducing the number of days a price must be held does not reduce the illegality of the restraint. Holding requirements of any type serve to stabilize prices and preclude responding to market forces in a competitive and timely manner. The proposed alternative itself acknowledges that it is intended "to support price stability." This acknowledgment is fatal because "a combination formed for the purpose and with the effect of . . . stabilizing the price . . . is illegal per se." *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643, 647 (1980) (quoting *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 223 (1940)). Although, again, private parties are setting the prices, the State

enforces those prices for a mandatory hold period without reviewing the prices for reasonableness. It is, therefore, equally settled law that a mandatory holding of posted prices, like the one here, is a per se unlawful hybrid restraint. *Miller II*, 813 F.2d at 1347; *TFWS*, 242 F.3d at 209; *Beer & Pop Warehouse v. Jones*, 41 F. Supp. 2d 552, 560-62 (M.D. Pa. 1999); *Canterbury Liquors & Pantry v. Sullivan*, 16 F. Supp. 2d 41, 46 (D.Mass. 1998); *Anheuser-Busch, Inc. v. Goodman*, 745 F. Supp. 1048, 1056 (M.D. Pa. 1990).

3. Requiring In-State Warehousing

As an alternative to the present ban on central warehousing, the Task Force is considering the proposal to allow central warehousing as long as, among other things, the warehouse is located within Washington. Judge Pechman found that the broad ban on warehousing by retailers amounted to a hybrid restraint on services by multi-store retailers acting as competitors with distributors as to distribution of product within the retailer's organization. The proposal narrows the boycott to those large, multi-state retailers of most competitive concern to distributors, but that does not change the antitrust analysis whatsoever. The restraint is still invalid.

Moreover, the requirement that the warehouse be in Washington adds a Commerce Clause violation to the mix. The United States Supreme Court has consistently held that, "in all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate 'differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.'" *Granholm v. Heald*, 544 U.S. 460, 472 (2005) (quoting *Oregon Waste Systems, Inc. v. Department of Environmental Quality of Ore.*, 511 U.S. 93, 99 (1994)). (In an amicus brief, the State of Washington supported the analysis and holding in *Granholm*.) A state may not enact laws that burden out-of-state producers or shippers simply to give a competitive advantage to in-state businesses. *Id.* Allowing states to discriminate against out-of-state wine or beer "invite[s] a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause." *Dean Milk Co. v. Madison*, 340 U.S. 349, 356 (1951).

The requirement of an in-state warehouse is a clear violation of the Commerce Clause. Washington would allow in-state retailers to centrally warehouse, but not multi-state retailers with warehouses outside of Washington. The Supreme Court has "viewed with particular suspicion state statutes requiring business operations to be performed in the home State that could more efficiently be performed elsewhere." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 145 (1970). This draft alternative is no different. Washington's in-state warehouse requirement runs contrary to the admonition that states cannot require an out-of-state firm "to become a resident in order to compete on equal terms." *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 72 (1963). For these reasons, Washington would be discriminating against interstate commerce if it were to adopt the in-state warehouse requirement. *See also Granholm*, 544 U.S. at 475-76.

Failure to Follow Federal Standards for Adopting Restraints on Competition

The Supreme Court has created a narrow opening for states to violate the federal antitrust laws if that is really what they want to do. (Such an intent is hard to imagine in light of the fact that the Washington Constitution bans monopolies, and the Washington legislature has copied the Sherman Act into state law at RCW 19.86.030 and has ordered that federal interpretations govern at RCW 19.86.920.) The restraints must be intended to serve an important state purpose other than merely protecting some competitors; there must not be readily available alternatives that would serve that purpose as well or better without violating federal antitrust law; and the restraints must be actively supervised to identify and minimize their unnecessary effect on competition. It serves no purpose for the Task Force to recommend to the Legislature options that have not been tested by those standards and could not possibly survive them.

Consequences of Ignoring Federal Law

You will note that the bulk of cases to which I have referred are from the Supreme Court. The primary lower court decisions are binding law in this jurisdiction. *Miller II* is the governing standard in the federal circuit that includes Washington, and *Costco v. Hoen* is the governing decision as to Washington's LCB activities of this type. Enactment of any of the three alternatives would put the members and staff of the Liquor Control Board in an untenable situation. Actions to enforce clearly unconstitutional state laws expose them to personal monetary liability. Accordingly, acting on advice of their attorneys general, liquor control boards in at least two states recently suspended enforcement of restraints that appeared likely to violate federal law. In this environment, it makes no sense to create new restraints.

Thank you for your consideration of these issues.

Very truly yours,



David J. Burman

cc: John McKay
John Sullivan



BEER INSTITUTE

October 11, 2006

**TO: Members of the Washington State Wine and Beer
Three Tier System Review Task Force**

**FROM: Jeff Becker 
President, The Beer Institute**

**Re. Task Force recommendations on issues before the
United State Court of Appeals for the 9th Circuit**

Representatives of the Beer Institute have been following the work of the Three Tier System Task Force with great interest over the last several months. Our members produce or import over 90% of the beer consumed in Washington State, and they have invested substantially in their respective distribution systems in order to comply with existing state law.

The future of the distribution structure in Washington State is already uncertain given the pending federal litigation initiated by Costco. We are very concerned that any Task Force recommendations at this time to change statutes that are under review before the United States Court of Appeals for the 9th Circuit will present even greater legal uncertainty for our members' wholesalers, and not provide members of the legislature with the full benefit of the appellate court's decision, which may differ from that of Judge Pechman.

We appreciate the Task's Force's desire to satisfy its legislative mandates by the beginning of the 2007 legislative session. When the legislature created that deadline in late March 2006, however, the federal district court had not yet ruled on the Costco case and, of course, an appeal had not yet been filed. Substantive and procedural issues in the litigation are still being developed and the first appellate briefs will not be filed with the Court of Appeals until November. Therefore, in the interest of best serving the legislature, we believe the Task Force should inform the legislature of the litigation status and seek an extension of time to provide recommendations following a decision from the appellate court.

While the appellate litigation continues, we also respectfully ask that the Three Tier System Task Force refrain from making any recommendations to amend or repeal provisions of Washington law that have been challenged in the ongoing litigation with Costco. Washington State and the Washington Beer and Wine Wholesalers have been developing their appellate arguments for submission to the 9th Circuit Court of Appeals. Any formal recommendations at this point in the process could undercut those efforts, which are intended to uphold existing Washington statutes.

Members of the Three Tier System Review Task Force continued...

Page 2

As a matter of principle, the existing enactments of the Washington Legislature should be respected unless and until the appellate process is completed in the federal court system. It would seem very strange that a group of state officials, industry representatives, and civic leaders funded by the legislature would take positions that could harm the state's position in litigation over the viability of properly enacted state laws. The state is also exposed to substantial liability in the litigation. Members of the legislature would surely appreciate the reason and the wisdom of delaying Task Force recommendations on the statutes under federal judicial review.

On a practical level, recommendations made by the Task Force should be consistent with the decision of the Court of Appeals. Any amendments to state law made necessary by the litigation should be developed to withstand further legal challenges. Otherwise state regulators, industry members, investors, and consumers face continued uncertainty over Washington State's alcohol beverage regulatory system.

Again, we respect the work that has been done to date by the Task Force, and urge that it continue its efforts on issues unrelated to the litigation. We also recognize that the course of events has been very difficult to predict. When a final decision is rendered by the 9th Circuit, the extensive background and deliberative approach taken by the Task Force will facilitate prompt additional guidance if further changes in State law are necessary. At this point in time, however, we ask that the Task Force refrain from making any recommendations on the issues being appealed to avoid damaging the position of the State and the beer wholesalers.

Appendix M
U.S. District Court Order on Plaintiff's Motion for
Partial Summary Judgment on Second Claim and
Related Portion of Third Claim

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COSTCO WHOLESALE CORPORATION,

Plaintiff,

v.

ROGER HOEN, et al.,

Defendants, and

WASHINGTON BEER AND WINE
WHOLESALE ASSOCIATION,

Intervenor-Defendant

No. C04-360P

ORDER ON PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT ON SECOND CLAIM
AND RELATED PORTION OF THIRD
CLAIM

This matter comes before the Court on Plaintiff Costco Wholesale Corporation's motion for partial summary judgment on its second claim and the related portion of its third claim. (Dkt. No. 69). Defendants and the Intervenor-Defendant have filed a joint brief in opposition to Plaintiff's motion. Having heard oral argument on this motion and having reviewed the papers and pleadings submitted by the parties, as well as an amicus brief filed by the Washington Wine Institute, the Court hereby ORDERS as follows:

- (1) Plaintiff's motion for summary judgment is GRANTED in part. The Court finds that Washington statutes that permit in-state beer and wine producers to distribute their products directly to retailers, while withholding such privileges from out-of-state beer

1 and wine producers, discriminate against out-of-state producers in violation of the
2 Commerce Clause of the United States Constitution.

3 (2) The Court DENIES Plaintiff's request that the Court remedy the unconstitutionality of
4 Washington's policies by extending the self-distribution privilege currently granted to
5 in-state wineries and breweries to out-of-state wineries and breweries. The remedy
6 proposed by Plaintiff would be more disruptive to Washington's existing statutory
7 scheme than withdrawing the self-distribution privilege from in-state wineries and
8 breweries.

9 (3) The Court STAYS the entry of judgment on these claims until April 14, 2006. Under
10 the circumstances of this case, such a stay of judgment is warranted to provide a
11 sufficient period of time for the Washington State Legislature to determine whether to
12 extend the self-distribution privilege to out-of-state beer and wine producers, rather
13 than withdrawing the privilege from in-state entities.

14 **Background**

15 Plaintiff Costco Wholesale Corporation ("Costco") is challenging a number of Washington
16 state laws and regulations governing the sale and distribution of beer and wine. Defendants are
17 members of the state Liquor Control Board (LCB). In addition, the Washington Beer and Wine
18 Wholesalers Association (WBWWA) has been granted leave to appear as an Intervenor-Defendant.¹
19 Costco raises both antitrust and constitutional claims in this litigation. This motion solely concerns
20 Costco's constitutional claims.

21 Like many states, Washington has established a "three-tier" system to regulate the sale and
22 distribution of alcoholic beverages. The "three tiers" refer to: (1) the producer; (2) the distributor or
23 wholesaler; and (3) the retailer. For the most part, state law prohibits wine and beer producers from

24
25 ¹ For ease of reference, the Court will refer to the Defendants and the Intervenor-Defendant collectively as "Defendants."

1 selling their products directly to retailers. Instead, the products generally must pass through a separate
2 distributor or wholesaler before reaching the retailer.

3 RCW 66.24.170 and 66.24.240 create an exception to this rule for wineries and breweries that
4 manufacture products in Washington state. The two statutes concern the licensing of “domestic”
5 wineries and breweries.² RCW 66.24.170(3) provides that “[a]ny domestic winery licensed under this
6 section may also act as a distributor and/or retailer of wine of its own production.” Similarly, RCW
7 66.24.240(2) provides that “[a]ny domestic brewery, except for a brand owner of malt beverages
8 under RCW 66.04.010(5), licensed under this section may also act as a distributor and/or retailer for
9 beer of its own production.” Both statutes provide that a domestic winery or brewery operating as a
10 distributor and/or retailer “shall comply with the applicable laws and rules relating to distributors
11 and/or retailers.” RCW 66.24.170(3) and 66.24.240(2).

12 In effect, these statutes allow domestic wineries and breweries to “self-distribute” their
13 products directly to retailers. By contrast, out-of-state beer and wine producers must sell their
14 products to a distributor, who in turn sells the products to retailers. See, e.g., RCW 66.28.070(1).

15 In the second claim set forth in its complaint, Costco challenges the constitutionality of RCW
16 66.24.170 and 66.24.240 as follows:

17 RCW 66.24.170 and 66.24.240 permit only Washington-based wineries and brewers to
18 distribute directly to retailers. These statutes unlawfully discriminate against out-of-state
19 wineries and brewers and against those seeking to deal with such businesses in violation of the
Commerce Clause.

20 Complaint ¶ 21. In its third claim, Costco alleges that it has been deprived of its constitutional rights
21 in violation of 42 U.S.C. § 1983. Id. ¶ 23.

22
23
24 ² A “domestic winery” is defined as “a place where wines are manufactured or produced
25 within the state of Washington,” while a domestic brewery is defined as “a place where beer and malt
liquor are manufactured or produced by a brewer within the state.” RCW 66.04.010(11)-(12).

Analysis

1. Granholm v. Heald

Costco's motion for summary judgment relies significantly on the Supreme Court's recent decision in Granholm v. Heald, 125 S. Ct. 1885 (2005). In Granholm, the Court considered the constitutionality of laws in Michigan and New York that allowed in-state wineries to ship their products directly to consumers, while prohibiting (or sharply restricting) the ability of out-of-state wineries to do so. The Court found that such laws discriminated against interstate commerce in violation of the Commerce Clause of the Constitution, Art. I, § 8, cl. 3.

The Granholm Court began its analysis by noting that "in all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate 'differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.'" Id. at 1895 (internal citation omitted). The Court further noted that "[s]tate laws that discriminate against interstate commerce face 'a virtually *per se* rule of invalidity.'" Id. at 1897 (internal citation omitted).

Michigan and New York attempted to justify their discrimination against out-of-state wineries by invoking § 2 of the Twenty-first Amendment, which provides the states with broad authority to regulate alcohol. The Court rejected the states' argument, finding that "state laws that violate other provisions of the Constitution are not saved by the Twenty-first Amendment" and that "state regulation of alcohol is limited by the nondiscrimination principle of the Commerce Clause." Id. at 1903-04. After analyzing Supreme Court precedent before and after prohibition, the Court held that state policies regulating the distribution of alcohol "are protected under the Twenty-first Amendment when they treat liquor produced out of state the same as its domestic equivalent." Id. at 1905.

Although the Michigan and New York policies discriminated against out-of-state wineries, the Court noted that the policies could be upheld if they advanced "a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." Id. (internal citation omitted).

The states offered two primary rationales: keeping alcohol out of the hands of minors and facilitating

1 tax collection. The Court rejected both arguments, finding that these purposes could be achieved
2 through other nondiscriminatory alternatives. The Court held that the states must demonstrate that
3 discrimination is “demonstrably justified” and that state regulations that discriminate against interstate
4 commerce will be upheld “only after finding, based on concrete record evidence, that a State’s
5 nondiscriminatory alternatives will prove unworkable.” *Id.* at 1907 (internal citations and quotations
6 omitted).

7 The Court concluded its holding as follows:

8 States have broad power to regulate liquor under § 2 of the Twenty-first Amendment. This
9 power, however, does not allow States to ban, or severely limit, the direct shipment of out-of-
10 state wine while simultaneously authorizing direct shipment by in-state producers. If a State
11 chooses to allow direct shipment of wine, it must do so on evenhanded terms. Without
demonstrating the need for discrimination, New York and Michigan have enacted regulations
that disadvantage out-of-state wine producers. Under our Commerce Clause jurisprudence,
these regulations cannot stand.

12 *Id.* at 1907.

13 2. Applicability of *Granholm* to Plaintiff’s Claims

14 Costco argues that *Granholm* is directly applicable to this case and requires a finding that
15 Washington’s policies are unconstitutional. Although the WBWWA had argued earlier in this
16 litigation that the issues presented in *Granholm* were “in principle the same” as the issues in this case,
17 Defendants now attempt to distinguish *Granholm*.

18 a. Ability of States to Grant Distributor Privileges Only to In-State Producers

19 Defendants argue that the challenged statutes merely allow in-state wineries and breweries to
20 serve as distributors for their own products. They suggest that this practice is constitutionally
21 permissible, arguing that “Washington treats all beer and wine sold to retailers the same, wherever it is
22 produced: retailers can only buy from entities licensed as distributors by the State.” (Opp. Brief at 3).

23 Defendants’ argument is not persuasive. Like the Michigan policy at issue in *Granholm*, the
24 “discriminatory character” of the Washington system is “obvious.” *Granholm*, 125 S. Ct. at 1896.
25 Domestic beer and wine producers are allowed to distribute their products directly to retailers, while

1 out-of-state producers may not. This privilege provides clear advantages to in-state wineries and
2 breweries that out-of-state producers do not enjoy. The Washington Wine Institute has submitted
3 declarations from Washington winery owners who indicate that the cost of selling their products
4 through wholesalers is quite high and cuts sharply into their profitability. Several winery owners also
5 note that it can be very difficult to find a distributor willing to take their products, particularly in cases
6 involving small wineries. Similar issues were noted by the Court in Granholm. See id. (noting that
7 Michigan law requiring out-of-state wines to pass through an in-state wholesaler increases costs of
8 out-of-state wines and that the inability to secure a wholesaler for small shipments can effectively bar
9 small wineries from the Michigan market).

10 As Costco notes, Washington's policies create a situation where "only in-state wineries can
11 avoid the bottleneck of obtaining a distributor." Costco also asserts that "only in-state wineries do not
12 have to impose two tiers' worth of minimum mark-ups (producer and distributor)." (Reply Brief at 3).
13 Costco is referring to Washington laws that require two levels of "minimum mark-ups" when beer and
14 wine is sold in the state. First, when a producer sells beer or wine to a wholesaler, the products must
15 be sold for at least 10 percent more than the cost of production. RCW 66.28.180(3)(b). The second
16 mark-up occurs when a wholesaler sells beer or wine to a retailer; the product must be sold for at least
17 10 percent more than the wholesaler's acquisition cost. RCW 66.28.180(2)(d).

18 On the record before the Court, it is readily apparent that Washington law discriminates
19 against out-of-state beer and wine producers and prevents them from competing on equal terms with
20 in-state producers. Washington law subjects out-of-state wineries and breweries, but not in-state
21 producers, to the added costs and burdens of selling their products through a separate wholesaler
22 under the three-tier system. Under Granholm, such discrimination against out-of-state producers is
23 not consistent with the Commerce Clause.

1 b. Applicability of *Granholm* to Direct Shipments to Retailers, Rather than to Consumers

2 The Granholm Court struck down state laws that prohibited out-of-state producers from
3 selling their products directly to consumers. Seizing on this distinction, Defendants argue that
4 Granholm is limited to cases involving direct sales from producers to consumers, rather than cases
5 involving direct sales from producers to retailers. Defendants suggest that “it is clear that the
6 Granholm majority believes there is a constitutionally significant difference between sales of alcoholic
7 beverages to individuals for personal use and sales of such products to retailers for resale.” (Opp.
8 Brief at 7).

9 Costco argues that nothing in Granholm’s holding or language suggests that prohibiting only
10 out-of-state producers from selling directly to retailers is any less constitutionally offensive than
11 prohibiting them from selling directly to consumers. The Court agrees. The central question in both
12 Granholm and in this case is whether a state can discriminate against out-of-state producers. Allowing
13 in-state producers to sell beer and wine directly to retailers, while withholding that privilege from out-
14 of-state producers, presents the same type of discrimination against interstate commerce that the Court
15 in Granholm held to be unconstitutional. Granholm does not suggest that it may be constitutionally
16 permissible for states to discriminate against out-of-state producers in sales to retailers, but not in sales
17 to consumers.

18 3. Legitimate Local Purposes for Discrimination Against Interstate Commerce

19 Defendants argue that even if RCW 66.24.170 and 66.24.240 discriminate against interstate
20 commerce, the statutes are nonetheless valid because they advance legitimate local purposes that
21 cannot be adequately served by any reasonable nondiscriminatory alternatives. If the State can make
22 such a showing, the statutes may be upheld despite their discrimination against interstate commerce.
23 See Granholm, 125 S. Ct. at 1905. However, the Granholm Court made it clear that a state seeking to
24 justify discrimination against interstate commerce faces a considerable burden. The Court noted:

1 Our Commerce Clause cases demand more than mere speculation to support discrimination
2 against out-of-state goods. The “burden is on the State to show that ‘the *discrimination* is
3 demonstrably justified.’” The Court has upheld state regulations that discriminate against
interstate commerce only after finding, based on concrete record evidence, that a State’s
nondiscriminatory alternatives will prove unworkable.

4 Granholm, 125 S. Ct. at 1907 (internal citations omitted) (emphasis in original).

5 Here, Defendants offer two local purposes for denying out-of-state producers the right to sell
6 their products directly to retailers: (1) ensuring the orderly distribution of beer and wine; and (2)
7 facilitating tax collection.

8 a. Orderly Distribution

9 Defendants argue that the state would not be able to assert sufficient control over the
10 distribution of beer and wine if out-of-state retailers were permitted to sell directly to retailers.
11 Defendants note that Washington has multiple laws governing the sale and distribution of beer and
12 wine. They argue that the State needs to conduct audits and annual inspections of distributors in order
13 to ensure compliance with these laws and that they do not have the resources to perform audits or
14 inspections for all out-of-state beer and wine producers who may seek to sell products directly to
15 retailers. They suggest that if out-of-state producers are allowed to sell directly to retailers, the State
16 will “lose all practical ability to control the distribution of alcohol.” (Opp. Brief at 12).

17 Defendants’ arguments are based on a declaration from Lorraine Lee, the Liquor Control
18 Board’s director of licensing and regulation. Ms. Lee asserts that the State “could not properly
19 enforce its mandated responsibilities in enforcing the statutes and regulations by having to inspect out-
20 of-state suppliers acting in the capacity as a distributor.” (Lee Decl., ¶ 4). She also states that there
21 “are not enough liquor enforcement officers to inspect the numerous suppliers outside the State of
22 Washington.” Id.

23 In response, Costco notes that similar arguments were raised in Granholm. See Granholm, 125
24 S. Ct. at 1907 (noting that “Michigan and New York offer a handful of other rationales, such as
25

1 facilitating orderly market conditions, protecting public health and safety, and ensuring regulatory
2 accountability.”) The Granholm Court rejected those arguments, holding:

3 These objectives can . . . be achieved through the alternative of an evenhanded licensing
4 requirement. Finally, it should be noted that improvements in technology have eased the
5 burden of monitoring out-of-state wineries. Background checks can be done electronically.
6 Financial records and sales data can be mailed, faxed, or submitted via e-mail.

7 Id.

8 Costco also argues that the Defendants have not indicated what purposes are accomplished by
9 annual inspections of distributors, nor has the State provided any evidence regarding the potential cost
10 of auditing out-of-state producers acting as distributors. In addition, Costco notes that Defendants
11 have not established that the state is financially unable to hire more enforcement agents or that the cost
12 of doing so could not be defrayed through licensing fees. Costco also suggests that physical visits to
13 distributors could be done cooperatively by other state liquor control boards.

14 The Court finds that Defendants have not produced sufficient evidence to create a genuine
15 issue of material fact on whether discrimination against out-of-state producers is demonstrably
16 justified to ensure orderly distribution of beer and wine. Defendants’ arguments are largely
17 speculative and conclusory. Much like in Granholm, Defendants provide “little concrete evidence for
18 the sweeping assertion that they cannot police direct shipments by out-of-state” producers. Granholm,
19 125 S. Ct. at 1907. The state must provide “more than mere speculation to support discrimination
20 against out-of-state goods.” Id. Under these standards, Defendants have not made a sufficient
21 showing to avoid summary judgment.

22 b. Tax Collection

23 Defendants also argue that distributor privileges must be restricted to in-state entities in order
24 to facilitate tax collection. In Washington, the “liter tax” on beer and wine is paid and collected at the
25 distributor level, rather than at the retailer level. Defendants argue that the State “is better able to

1 enforce the collection of such taxes than would be the case if the tax-collecting entity was out-of-
2 state.” (Opp. Brief at 12).

3 Costco responds by noting that similar arguments were raised in Granholm. Like Defendants,
4 New York state argued that tax collection was a legitimate local purpose for prohibiting out-of-state
5 wineries from shipping directly to consumers. The Court rejected this argument, finding that “New
6 York could protect itself against lost tax revenue by requiring a permit as a condition of direct
7 shipping” and that “[l]icensees could be required to submit regular sales reports and to remit taxes.”
8 Granholm, 125 S. Ct. at 1906. Costco argues that there is no reason why Washington could not do
9 the same, noting that the state already requires out-of-state producers to obtain “certificates of
10 approval” in order to sell their products to Washington wholesalers.

11 Costco also notes that until relatively recently the state relied on retailers, rather than
12 wholesalers, to collect the liter tax on beer and wine. Costco states that this duty was shifted to
13 wholesalers in 1973 for wine and in 2000 for beer. Costco argues that the state offers no reason why
14 the liter tax could not again be collected at the retailer level, rather than at the distributor level.

15 The Court finds that Defendants have not presented evidence that is sufficient to create a
16 genuine issue of material fact on whether discrimination against out-of-state beer and wine producers
17 is demonstrably justified to facilitate tax collection. As before, Defendants’ arguments are speculative
18 and conclusory at best.

19 c. Other Non-Discriminatory Alternative

20 Finally, it should be noted that Washington has at least one non-discriminatory alternative to
21 the current regulatory scheme that would address Defendants’ professed concerns about ensuring
22 orderly distribution of beer and wine and facilitating tax collection: The state could revoke the self-
23 distribution privileges granted to in-state beer and wine producers. As the Fourth Circuit noted in a
24 recent case where a 1981 North Carolina law allowed in-state wineries, but not out-of-state wineries,
25 to sell their products directly to consumers:

At least one reasonable nondiscriminatory alternative is available to North Carolina and it would require North Carolina simply to return to the pre-1981 structure and require in-state wines to pass through the same three-tiered scheme that all other wines must pass through.

Beskind v. Easley, 325 F.3d 506, 515 (4th Cir. 2003). Similarly, Washington state could avoid discrimination against out-of-state producers by requiring both in-state and out-of-state producers to sell their products through the same three-tiered structure.

4. Remedy

The constitutional infirmities of Washington's system may be remedied by two different approaches: (1) allowing out-of-state producers of beer and wine to distribute directly to retailers; or (2) prohibiting in-state producers of beer and wine from distributing directly to retailers. Costco and the Washington Wine Institute support the first alternative, while the LCB defendants and the Washington Beer and Wine Wholesalers Association argue for the second option. The Wine Institute also suggests that the Court should stay enforcement of any order on this matter until the State Legislature has had sufficient time to revise the challenged statutes.

Both sides cite Heckler v. Matthews, 465 U.S. 728 (1984), to support their positions. In Heckler, the Court stated that when a district court is faced with a "constitutionally underinclusive" statute, it has "two remedial alternatives: [it] may either declare [the statute] a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by the exclusion." Id. at 738 (internal citations and quotations omitted). In a footnote, the Court elaborated on this point:

Although the choice between "extension" and "nullification" is within the "constitutional competence of a federal district court," and ordinarily "extension, rather than nullification, is the proper course," the court should not, of course, "use its remedial powers to circumvent the intent of the legislature," and should therefore "measure the intensity of commitment to the residual policy and consider the degree of potential disruption of the statutory scheme that would occur by extension as opposed to abrogation."

Id. at 739 n.5 (internal citations omitted).

1 Costco points to language from Heckler stating that “extension, rather than nullification” is
2 ordinarily the proper way to remedy an underinclusive statute. Costco also notes that since Granholm,
3 several district courts have held that state laws allowing only in-state wine producers to sell directly to
4 consumers should be remedied by extending the direct shipment privilege to out-of-state producers.

5 Defendants argue that Washington has a long history of enforcing a three-tier system and that
6 the remedy proposed by Costco “would require the court to invade the province of the state legislature
7 and amend a number of provisions regarding the three-tier system.” Defendants note that the
8 Washington Legislature has adopted severability clauses for the state’s beer and wine distribution
9 laws, which generally provide that if any provisions of the statutes are held invalid, the remainder of
10 the statutes should not be affected. RCW 66.98.080, 090. Defendants also point to Beskind v.
11 Easley, 325 F.3d 506 (4th Cir. 2003), a case involving a North Carolina law that allowed in-state wine
12 producers to sell directly to consumers, while requiring out-of-state producers to sell through
13 wholesalers. The Beskind court remedied the unconstitutionality of the statute by striking down the
14 preference for in-state wineries. In explaining its reasoning, the court noted:

15 [W]e can accept a presumption that North Carolina would want to uphold and preserve all of
16 its [Alcoholic Beverage Control] laws against constitutional challenges. Accordingly, when
17 presented with the need to strike down one or more of those laws as unconstitutional, we can
18 assume that North Carolina would wish us to take the course that least destroys the regulatory
19 scheme that it has put into place pursuant to its powers under the Twenty-first Amendment.
20 And as a matter of comity and harmony, we are duly bound to give effect to such a policy,
21 disturbing only as much of the State regulatory scheme as is necessary to enforce the U.S.
22 Constitution. When applying this “minimum-damage” approach, we have little difficulty in
23 concluding that it causes less disruption to North Carolina’s . . . laws to strike the single
24 provision – added in 1981 and creating the local preference – as unconstitutional and thereby
25 leave in place the three-tiered regulatory scheme that North Carolina has employed since 1937
and has given every indication that it wants to continue to employ.

21 Id. at 519.

22 In this case, the remedy proposed by Defendants would appear to create the “minimum
23 damage” to the existing statutory and regulatory scheme in Washington. Defendants remedy would
24 require portions of only two statutory provisions (RCW 66.24.170(3) and RCW 66.24.240(2)) to be
25

1 invalidated. By contrast, a proposed order submitted by Costco would require six statutory provisions
2 to be amended in order to extend the self-distribution privilege to out-of-state producers. (RCW
3 66.12.030(2), 66.28.070(1), 66.24.170(3), 66.24.206; 66.24.240(2), and 66.24.270). Defendant's
4 proposed remedy would remove a limited exception to Washington's long-standing three-tier system,
5 while Plaintiff's proposed remedy would significantly expand this exception. Extending the self-
6 distribution privilege to out-of-state producers would also require more significant changes in the
7 State's licensing, enforcement, and tax collection efforts for beer and wine than withdrawing the
8 privilege from in-state producers.

9 Therefore, the more appropriate remedy from a judicial perspective would be to withdraw the
10 self-distribution from in-state producers, rather than extending the privilege to out-of-state producers.
11 It should be emphasized that the Court is not empowered to decide which alternative represents better
12 public policy. Although the Court recognizes that withdrawing the self-distribution privilege would
13 impose financial hardships on Washington wineries, this remedy would appear to be more consistent
14 with the intent of the Washington Legislature because it would impose less significant changes on the
15 existing statutory and regulatory structure for beer and wine in the state.

16 The Washington Wine Institute argues that the Court should "stay the enforcement of its order
17 for a period sufficient to permit the Washington legislature to act on the matter." (Dkt. No. 109 at 2).
18 The Court agrees. The constitutional defects in the current Washington system present a policy choice
19 between two alternatives, a decision that is within the discretion of the State Legislature. Regardless
20 of the remedy chosen by the Court, the State Legislature could simply choose to adopt the other
21 remedy during the upcoming legislative session, which starts in early January 2006. Therefore, the
22 Court will stay the entry of judgment on this claim until April 14, 2006 to provide the Washington
23 State Legislature with a sufficient period of time to act on this matter. See, e.g., Population Servs.
24 Int'l v. Wilson, 398 F. Supp. 321, 340-41 (S.D.N.Y. 1975) (staying enforcement of injunction for a
25 period of time to permit state legislature the opportunity to amend unconstitutional statutes).

Conclusion

In light of the Supreme Court's decision in Granholm, Washington may not permit in-state beer and wine producers to distribute their products directly to retailers while withholding that privilege from out-of-state producers. Without demonstrating the need for such discrimination, Washington's system prevents out-of-state beer and wine producers from competing on equal terms with in-state producers. Under the Commerce Clause of the United States Constitution, Washington's policies cannot stand. Therefore, the Court GRANTS in part Costco's motion for summary judgment on its second claim and the related portion of its third claim.

The Court DENIES Costco's request to remedy the unconstitutionality of Washington's system by extending the self-distribution privilege to out-of-state producers. This remedy would be more disruptive to the existing statutory and regulatory scheme than withdrawing the self-distribution privilege from in-state producers. The Court recognizes, however, that the Washington State Legislature ultimately has the authority to decide whether to correct the constitutional infirmities of the Washington system by either extending the self-distribution privilege to out-of-state producers or withdrawing the privilege from in-state producers. Because the State Legislature will be convening in early January 2006, the Court will stay the entry of judgment on these claims until April 14, 2006 in order to provide the State Legislature with sufficient time to act on this matter.

The clerk is directed to provide copies of this order to all counsel of record.

Dated: December 21, 2005

s/Marsha J. Pechman
Marsha J. Pechman
United States District Judge

Appendix N
U.S. District Court Findings of Fact and
Conclusions of Law

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COSTCO WHOLESALE CORPORATION,

Plaintiff,

v.

ROGER HOEN, et al.,

Defendants, and

WASHINGTON BEER AND WINE
WHOLESALE ASSOCIATION,

Intervenor-Defendant

No. C04-360P

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter was tried before the Court from March 21 to March 30, 2006. Plaintiff Costco Wholesale Corporation challenges various Washington state laws and regulations regarding the sale and distribution of beer and wine, particularly policies that tend to increase the average cost of beer and wine to retailers. Defendants are members of the Washington State Liquor Control Board (LCB). The Washington Beer and Wine Wholesalers Association (WBWWA) was granted leave to intervene in this matter as an Intervenor-Defendant.

In prior orders, the Court held that most of the restraints challenged by Costco are irreconcilably in conflict with federal antitrust law, as embodied in the Sherman Act of 1890. At trial,

1 the primary issue was whether the challenged restraints may be upheld as a valid exercise of state
2 power under the Twenty-first Amendment to the United States Constitution, despite their anti-
3 competitive nature.

4 The Sherman Act reflects a strong federal policy in favor of competition. At the same time,
5 the Twenty-first Amendment provides each state with broad authority to regulate alcohol products in
6 order to advance certain “core interests,” such as promoting temperance, ensuring orderly market
7 conditions, and raising revenue. This case requires the Court to consider whether the challenged
8 restraints are effective in advancing the state’s core interests under the Twenty-first Amendment and
9 whether the state’s interests outweigh the federal interests in promoting competition.

10 For the most part, the Court finds that the policies challenged by Costco are not effective in
11 advancing the state’s core interests under the Twenty-first Amendment. The Court also finds that the
12 state’s interests do not trump the federal interest in promoting competition even when the restraints
13 may be minimally effective in advancing the state’s interests.

14 Therefore, having considered the evidence, testimony, and arguments presented by the parties,
15 the Court finds and concludes as follows:

16 (1) The following state restraints are preempted by the federal Sherman Act and are not
17 shielded by the Twenty-first Amendment:

- 18 (a) Policies that require beer and wine distributors and manufacturers to “post”
19 their prices with the state and to “hold” those prices for a full month;
- 20 (b) Policies that require beer and wine distributors to charge uniform prices to all
21 retailers;
- 22 (c) Prohibitions on selling beer and wine to retailers on credit;
- 23 (d) Prohibitions on volume discounts for beer and wine sales;
- 24 (e) Policies that require beer and wine distributors to charge the same “delivered”
25 price to all retailers, regardless of the actual delivery costs;

1 (f) Prohibitions on central warehousing of beer and wine by retailers; and

2 (g) Policies that require a 10% minimum mark-up on sales of beer and wine from
3 producers to wholesalers, as well as a 10% minimum mark-up on sales of beer
4 and wine from distributors to retailers.

5 (2) Costco also challenges Washington's ban on retailers selling beer and wine to other
6 retailers. The Court finds that this policy is a unilateral restraint on trade imposed purely by the state
7 of Washington. As a unilateral restraint, it does not run afoul of the Sherman Act. Therefore, the
8 Court dismisses Costco's antitrust claims regarding the ban on retailer-to-retailer sales of beer and
9 wine.

10 (3) The Court will stay the judgment in this matter for a period of 30 days while
11 Defendants consider whether to file a notice of appeal in this matter. If Defendants decide to pursue
12 an appeal and wish to seek a extension of the stay pending appeal, they should move promptly for such
13 an extension.

14 The Court's findings of fact and conclusions of law are set forth below.

15 Framework for Analysis

16 Defendants¹ argue that the challenged restraints are permissible exercises of state power under
17 the Twenty-first Amendment to the United States Constitution. The Fourth Circuit has characterized
18 the framework for analyzing a Twenty-first Amendment defense as a three-part inquiry:

19 (1) First, the court should examine the expressed state interest and the closeness of that
20 interest to those protected by the Twenty-first Amendment.

21 (2) Second, the court should examine whether, and to what extent, the regulatory scheme
22 serves its stated purpose Simply put, is the scheme effective?

23 (3) Finally, the court should balance the state's interest . . . (to the extent that interest is
24 actually furthered by the regulatory scheme) against the federal interest in promoting
25 competition under the Sherman Act.

¹ For ease of reference, the Court refers to the LCB and WBWWA collectively as
"Defendants."

1 TFWS, Inc. v. Schaefer, 242 F.3d 198, 213 (4th Cir. 2001); see also Miller v. Hedlund, 813 F.2d
2 1344, 1352 and n.7 (9th Cir. 1987) (similar).

3 Defendants maintain that the challenged restraints serve three state interests protected by
4 Twenty-first Amendment: (1) promoting temperance; (2) ensuring orderly market conditions; and (3)
5 raising revenue.

6 Findings of Fact

7 1. Costco challenges the following policies regarding the sale and distribution of beer and
8 wine in Washington:

- 9 (a) ***“Posting” Requirement:*** Washington requires manufacturers and distributors
10 of beer and wine to “post” the prices of their products with the LCB. RCW
11 66.28.180(2)-(3); WAC 314-20-100(2) & (5); WAC 314-24-190(2) & (5). The
12 posted prices are publicly available after they take effect.
- 13 (b) ***“Holding” Requirement:*** Beer and wine manufacturers and distributors must
14 “hold” their posted prices for a full month. WAC 314-20-100(2) & (5); WAC
15 314-24-190(2) & (5). That is, they cannot change their posted prices for an
16 entire calendar month.
- 17 (c) ***Uniform Pricing Requirement:*** Distributors must sell their beer and wine
18 products to every retailer at the same price that they have posted with the state.
19 RCW 66.28.170; RCW 66.28.180(2) & (3); WAC 314-12-140; WAC 314-20-
20 100(2), (4) & (5); WAC 314-24-190(2), (4) & (5).
- 21 (d) ***Ban on Credit Sales:*** Distributors may not sell beer or wine to retailers on
22 credit. WAC 314-13-015; RCW 66.28.010; WAC 314-20-090; WAC 314-12-
23 140(3).
- 24
25

- 1 (e) ***Ban on Volume Discounts:*** Distributors may not offer volume discounts when
2 selling beer or wine to retailers. RCW 66.28.180(2)(d) & (3)(b); RCW
3 66.28.170; WAC 314-12-140(3).
- 4 (f) ***“Delivered Pricing” Requirement:*** Distributors must sell beer and wine at the
5 same “delivered” price to all retailers, even if the retailer pays the freight and
6 picks up the goods itself. RCW 66.28.180(2)(h)(ii).
- 7 (g) ***“Central Warehousing” Ban:*** Washington prohibits retailers from storing or
8 taking delivery of beer and wine at a central warehouse. RCW
9 66.28.180(2)(h)(ii). Washington also prohibits retailers from operating a
10 warehouse that includes wine (RCW 66.24.185(4)), and has adopted a
11 regulation that limits the output of wine from warehouses. WAC 314-24-
12 220(5).
- 13 (h) ***“Minimum Mark-Up” Requirements:*** With limited exceptions, manufacturers
14 of beer and wine must charge at least 10 percent more than their cost of
15 production when they sell products to distributors, and distributors must charge
16 at least 10 percent more than their cost of acquisition when they resell beer and
17 wine to retailers. RCW 66.28.010(2); RCW 66.28.180(2)(d) & (3)(b).
- 18 (i) ***Ban on Retailer-to-Retailer Sales:*** Washington prohibits retailers from selling
19 beer and wine to other retailers.² RCW 66.28.070; WAC 314-13-010.
20
21
22

23 ² As discussed in the conclusions of law below, the Court concludes that Costco’s challenge to
24 Washington’s ban on retailer-to-retailer sales of beer and wine should be dismissed as a matter of law
25 because this policy is a unilateral restraint and is not preempted by the Sherman Act. As a result, the
Court’s discussion of the “challenged restraints” in the findings of fact should not be construed as
including the ban on retailer-to-retailer sales.

Overview of Washington's Regulatory System

2. Following the repeal of Prohibition in 1933, Washington adopted the "Washington State Liquor Act," which the parties also referred to as the "Steele Act." This legislation, which took effect in January 1934, established the Washington State Liquor Control Board (LCB). The Liquor Act directed the LCB to establish "state liquor stores." Consistent with this mandate, the LCB operates liquor stores throughout the state that sell distilled spirits, as well as beer and wine. Private retailers such as Costco may also sell beer and wine, but may not sell spirits.

3. Some of the challenged restraints have been in effect, in varying forms, since the 1930s. Other restraints have been added more recently.

4. With the adoption of the Liquor Act in 1934, Washington adopted a "three-tier" system for the distribution of beer, a system that was later extended to wine. A "three tier" system consists of the following levels: manufacturer, distributor, and retailer. Under a three-tier system, manufacturers sell products to distributors, who in turn sell the products to retailers.

5. The three-tier system in Washington has changed since 1934. For instance, prior to this litigation the Washington State Legislature allowed Washington beer and wine manufacturers (but not out-of-state manufacturers) to sell their products directly to retailers, without using separate distributors. Costco challenged this policy to the extent that it prevented out-of-state manufacturers from selling beer and wine directly to retailers.

6. In December 2005, the Court held that Washington's policy of allowing in-state beer and wine manufacturers to sell their products directly to retailers, while prohibiting out-of-state manufacturers from doing the same, violated the Commerce Clause to the United States Constitution. To ensure equal treatment of in-state and out-of-state manufacturers, the Court provided the State Legislature with several months to either withdraw the direct sales privilege from in-state manufacturers or extend the direct sales privilege to out-of-state manufacturers. The day before the trial in this matter ended, Washington's governor signed legislation that extended the direct sales

1 privilege to out-of-state retailers. This legislation includes a “sunset” provision, meaning that most
2 provisions will expire by June 30, 2008 unless they are renewed. See 2006 Wash. Sess. Laws 302.

3 7. Many of the restraints challenged in this case are codified under RCW 66.28.180. This
4 section of the Revised Code of Washington includes the following “intent” language, which was
5 adopted in 1995:

6 Intent: This section is enacted, pursuant to the authority of this state under the twenty-first
7 amendment to the United States Constitution, to promote the public’s interest in fostering the
8 orderly and responsible distribution of malt beverages and wine towards effective control of
9 consumption; to promote the fair and efficient three-tier system of distribution of such
beverages; and to confirm existing [Liquor Control] board rules as the clear expression of state
policy to regulate the manner of selling and pricing of wine and malt beverages by licensed
suppliers and distributors.

10 RCW 66.28.180(1). This language was proposed by the WBWWA and subsequently adopted by the
11 Legislature.

12 8. The LCB currently describes its mission as follows: “The mission of the Liquor Control
13 Board is to serve the public by preventing the misuse of alcohol and tobacco through controlled
14 distribution, enforcement, and education; and provide excellent customer service by operating
15 efficient, convenient and profitable retail stores.”

16 9. Defendants suggest that Washington’s regulatory system should be regarded as
17 reasonable because there has been a “lack of significant concern voiced by any of the various groups
18 interested in the regulation of beer and wine distribution and sales” and an “absence of any public
19 outcry for more or less regulation, or for higher or lower prices for beer and wine.” (Dkt. No. 147 at
20 9). However, through this lawsuit Costco has plainly expressed significant concern about various
21 aspects of the regulatory system. In addition, concerns about abusive alcohol consumption in recent
22 years has led to the establishment of Alcohol Impact Areas in certain parts of the state.

23 Temperance

24 10. The Washington State Legislature has not used the term “temperance” to describe the
25 purpose of any of the challenged restraints. However, the Legislature has stated RCW 66.28.180 is

1 intended to promote “effective control of consumption,” a statement that may be interpreted as an
2 expression of the state’s interest in promoting temperance. In the context of alcohol consumption, the
3 term “temperance” may be understood as “restrained or moderate indulgence.” Black’s Law
4 Dictionary (5th ed. 1979).

5 11. Washington does not seek to promote “temperance” by promoting abstention or by
6 reducing overall consumption of beer and wine. Indeed, the state actively promotes its domestic beer
7 and wine industries and seeks to serve overall lawful demand for beer and wine.

8 12. The parties have stipulated that “[o]n average, prices of beer and wine in Washington
9 are somewhat higher than they would be in the absence of the restraints” challenged in this lawsuit.
10 (Dkt. 122 at 3). The amount of this average increase in beer and wine prices was not clearly
11 established at trial. Defendants maintain that the challenged restraints promote temperance by
12 increasing the average price of beer and wine in Washington state.

13 13. Although the challenged restraints result on average in somewhat higher prices for beer
14 and wine, this fact does not mean that all retailers pay higher prices for beer and wine than they would
15 without the challenged restraints. Instead, the evidence suggests that the restraints allow some
16 retailers to pay lower prices for beer and wine than they would without the restraints, while other
17 retailers pay higher prices that they would without the restraints.

18 14. In general, small retailers and retailers in remote locations tend to obtain lower prices
19 for beer and wine than they would without the restraints because distributors must charge uniform
20 prices to all retailers, regardless of actual delivery costs or the volume of products purchased. In
21 effect, the restraints tend to make beer and wine more affordable for higher-cost retailers (such as
22 small convenience stores or remote retailers), while raising prices for other retailers (such as large
23 retailers).

24 15. The Court is not persuaded that the state effectively promotes temperance by lowering
25 the cost of beer and wine for some retailers, while raising the price of beer and wine for other retailers.

1 Indeed, this policy would appear to increase consumption by making it less expensive for consumers
2 to obtain beer and wine at the most convenient and easily accessible locations.

3 16. There is no persuasive evidence that the purpose of any of the challenged restraints was
4 to promote temperance by raising average beer and wine prices. Prior to this litigation, neither the
5 State Legislature nor the LCB expressed such a purpose. LCB member Vera Ing testified that it is not
6 the LCB's policy to generally raise prices in order to reduce consumption of beer and wine. (Ing.
7 Dep. at 17). Ms. Ing also testified that the LCB has "no mandate to increase or eliminate or reduce
8 consumption." (Ing Dep. at 24). When the LCB was asked in interrogatories to explain how the
9 challenged restraints were necessary, effective, or sufficient in promoting temperance, the LCB
10 responded by stating that the question "assum[ed] facts not in evidence, specifically, that the
11 prohibitions and requirements at issue in this lawsuit have the goal . . . of promoting temperance."
12 (Ex. 245 at 4).

13 17. The LCB has sometimes opposed efforts to increase the prices for wine at state liquor
14 stores. In 1981, for instance, the LCB opposed a legislative proposal to increase wine prices in state
15 stores, noting that "state liquor stores sell wine cheaper than grocery stores" and that under the
16 proposed measure "[c]onsumers would suffer. Right now an estimated 500,000 people . . . choose to
17 buy their wine at state stores because prices are lower." (Ex. 60). Similarly, the LCB opposed a
18 proposal in 1975 to eliminate the state's role in wine sales, arguing that "[i]f the move to take the state
19 out of the wine business is successful, the consumer will pay higher prices for wine." (Ex. 51). Such
20 statements do not reflect a consistent view by the LCB that higher wine prices are desirable or
21 necessary to promote temperance.

22 18. The Court is not persuaded that the challenged restraints are effective in promoting
23 temperance, whether viewed individually or as a whole. To be sure, the evidence at trial indicated that
24 Washington has one of the lowest rates in the country for per capita ethanol consumption per drinker,
25 even though Washington ranks well above the national average in terms of the percentage of the

1 population who consume alcohol. As a result, it appears Washington residents who consume alcohol
2 tend to drink more moderately than alcohol consumers who live in most other states. However, there
3 is no persuasive evidence that the Washington's relatively low rates of ethanol consumption per
4 drinker are due to any of the challenged restraints, either viewed individually or as a whole.

5 19. There has been little if any research or careful study on whether the type of restraints
6 challenged in this litigation are effective in promoting temperance. Dr. Frank Chaloupka, an expert
7 witness offered by Defendants, indicated that he was not aware of any published studies regarding the
8 impact of the types of policies at issue in this case on alcohol consumption. (Ex. 581 at 16). In his
9 writings, Dr. Chaloupka has also noted that "[i]n general, resulting in part from legal challenges
10 initiated by alcoholic beverage wholesalers or retailers, state laws and regulations limiting competition
11 in the alcoholic beverage markets have been relaxed over time." He indicates that "empirical evidence
12 on the impact of changes in these policies on alcoholic beverage prices, drinking, and its consequences
13 is almost nonexistent. Clearly, more research is needed to fully understand the impact of the complex
14 and varied policies that affect alcoholic beverage distribution, marketing, and pricing on the retail
15 prices of these beverages." (Ex. 337 at 547).

16 20. The analyses offered by Dr. Chaloupka do not provide convincing evidence that the
17 challenged restraints are effective in promoting temperance. In these analyses, Dr. Chaloupka
18 concluded that the elimination of certain policies in Nebraska (price posting for wine and spirits and a
19 ban on quantity discounts) and Delaware (a ban on quantity discounts on beer, wine, and spirits)
20 resulted in higher rates of overall alcohol consumption than would have resulted if the restraints had
21 remained in place. However, wine consumption in Nebraska actually decreased significantly after the
22 restraints in that state were eliminated. In addition, Delaware is a small state located near
23 Philadelphia, meaning that cross-border purchases of alcohol likely result in a significant percentage of
24 alcohol sold in the state. The Court finds the critique of Dr. Chaloupka's analyses offered by
25 Plaintiff's expert Michael Moore to be persuasive.

21. Washington has adopted a number of policies that may contribute to the state's moderate rates of ethanol consumption per drinker. Among other things, the state exercises monopoly control over wholesale and retail sales of spirits, imposes relatively high excise taxes on beer and wine, has adopted policies targeting drinking and driving and youth access to alcoholic beverages, and has adopted rules allowing the implementation of "Alcohol Impact Areas." As Plaintiff's expert Michael Moore notes, "it is impossible to separately identify the effects of the policies at issue [in this litigation] from all of the other policies" adopted by Washington. (Ex. 240 at 16).

22. Even if the Court were to find that the challenged restraints had some effect in promoting temperance by raising average beer and wine prices, the Court finds that the state's interest in promoting temperance in this manner does not outweigh the federal interest in promoting competition under the Sherman Act. If the State desires to promote temperance by artificially increasing beer and wine prices, the State could readily achieve that goal in a manner that does not run afoul of the Sherman Act. Most obviously, the State could adopt higher excise taxes on beer and wine.

Orderly Market Conditions

23. The Washington Legislature has expressed its intent “to promote the public’s interest in fostering the orderly and responsible distribution of malt beverages and wine. . . .” RCW 66.28.180(1). This statement can be construed as an expression of the Washington Legislature’s intent to promote orderly market conditions for beer and wine.

24. It is not clear what the term “orderly market conditions” or “orderly distribution” encompasses. As one court recently noted that “[a]s for ‘ensuring orderly markets,’ we are not sure what that phrase means.” Bainbridge v. Turner, 311 F.3d 1104, 1115 (11th Cir. 2002).

25. Defendants did not provide a clear or consistent definition of the terms “orderly marketing” or “orderly distribution.” LCB member Vera Ing defined “orderly distribution” as the “three-tier system” and stated that orderly distribution “would be the ability to supervise” and “clearly

1 articulated procedures.” (Ing Dep. at 167). Dr. Kenneth Casavant, an economist, defined “orderly
2 marketing” as “asking the market to have the prices reflect the cost of production” and to have the
3 market avoid “gluts and scarcities.” In their proposed findings and conclusions of law, Defendants
4 suggest that the Court should find that “orderly marketing of beer and wine refers to a system that
5 promotes relative price uniformity, relative price stability, and relatively wide availability with respect
6 to beer and wine.” (Dkt. No. 147 at 6).

7 26. Under a “three-tier” system, beer and wine is sold from a manufacturer to a
8 distributor, who in turn sells the product to a retailer. A three-tier system does not require the
9 “posting” and “holding” of beer and wine prices, nor does it require uniform prices to be charged to all
10 retailers or “delivered pricing” restraints. Similarly, a three-tier system does not require minimum
11 mark-ups, a ban on credit sales and volume discounts, or a ban on central warehousing of beer and
12 wine by retailers.

13 27. The challenged restraints are not effective in ensuring that prices of beer and wine
14 reflect the cost of production. Washington law prohibits below-cost sales of beer and wine, and this
15 restraint is not challenged in this litigation. To be sure, the challenged restraints – in particular, the
16 price “posting” requirement – may aid the LCB in enforcing Washington’s ban on below-cost sales of
17 beer and wine. For instance, if the LCB receives complaints that a distributor is selling products
18 below cost, the LCB can review the distributor’s posted price and compare it to the price charged to
19 an individual retailer. However, the state could enforce its below-cost sales law without requiring
20 posting of prices. Most obviously, the state could simply require suppliers and distributors to keep all
21 purchase and sales records on site for inspection by the LCB.

22 28. There is little evidence that the challenged restraints are effective in preventing “gluts”
23 of beer and wine in Washington. At trial, Defendants appeared to suggest that the 10 percent
24 minimum mark-ups prevent gluts in the market. However, the evidence at trial indicated that
25 distributors typically mark-up the prices of beer and wine products by more than 10 percent. Indeed,

1 Defendants state that “[t]he minimum mark-up requirements have virtually no impact on prices
2 actually charged, because suppliers and distributors routinely mark their products up by far more than
3 10%.” (Dkt. No. 147 at 13). The 10 percent minimum mark-up may prevent distributors from
4 “dumping” beer products on the market at lower prices when the products are nearing their expiration
5 dates. However, the evidence does not suggest that the amount of beer that may be sold in such
6 situations is sufficient to create any appreciable “gluts” in the marketplace.

7 29. The Court is not persuaded that the challenged restraints are effective in preventing
8 scarcities in the beer or wine markets in Washington state. If the restraints were not in place, there is
9 no apparent reason why beer and wine would not distributed in an orderly manner throughout the
10 state, just like other common consumer items. There is no evidence that states that have not adopted
11 policies similar to Washington have experienced scarcities of beer or wine.

12 30. The challenged restraints ensure that all retailers are able to purchase beer and wine
13 from distributors at the same prices offered to larger retailers. The uniform pricing requirement (as
14 reinforced by the delivered pricing requirement, as well as the bans on volume discounts, credit sales,
15 and central warehousing) ensures that a distributor must charge the same price for a particular product
16 to every retailer, regardless of actual delivery costs or other factors that may justify different prices. In
17 the absence of the restraints, it is likely that smaller and more remote retailers would tend to pay
18 somewhat higher prices for beer and wine than larger and more economically-efficient retailers.

19 31. The Court regards these restraints as only minimally effective in promoting the state’s
20 interest in “orderly market conditions.” In a sense, the challenged restraints make the beer and wine
21 market in Washington somewhat more “orderly” by ensuring that all licensed retailers, regardless of
22 their size, location, or efficiency, are able to purchase beer and wine at the same price from any given
23 distributor. However, there is no persuasive evidence that smaller or remote retailers would be unable
24 to survive economically without the challenged restraints or that they would otherwise be unable to
25 purchase or profitably sell beer or wine. The Court finds persuasive Costco’s argument that all

1 manner of goods, from potato chips to chewing gum, find their way to even the most remote parts of
2 the state.

3 32. To the limited extent that the challenged restraints may be effective in promoting the
4 state's interest in "orderly market conditions" by requiring uniform pricing to retailers, the Court finds
5 that the state's interests are outweighed by the federal interest in promoting competition. As the
6 Supreme Court has noted, a state's "unsubstantiated interest in protecting small retailers 'simply [is]
7 not of the same stature as the goals of the Sherman Act.'" 324 Liquor Corp. v. Duffy, 479 U.S. 335,
8 350 (1987).

9 Raising Revenue

10 33. The Court finds that the challenged restraints, viewed either individually or as a whole,
11 are not effective in advancing the state's interest in raising revenue. There is no persuasive evidence
12 that the challenged restraints play an appreciable role in raising revenue for the state or in ensuring
13 efficient collection of taxes. Taxes on alcohol products can be collected at both the retailer and
14 distributor level, just as sales taxes for other goods.

15 34. If the state in fact wishes to promote temperance by artificially increasing the price of
16 beer and wine, the challenged restraints appear to result in a significant amount of lost potential
17 revenue for the state. The state could increase beer and wine prices by raising excise taxes, an action
18 that would increase the state's revenues. By contrast, the challenged restraints increase the average
19 price of beer and wine in a manner that leaves most of the increased revenue to beer and wine
20 wholesalers, rather than the state. As Defendants' expert Frank Chaloupka testified, "somebody gets
21 the money from the higher prices" and "the majority of the surplus would end up with the
22 wholesalers."

1 **Conclusions of Law**

2 **Ban on Retailer-to-Retailer Sales**

3 1. In general, Washington prohibits retailers from selling beer and wine to other retailers.
4 This restraint is imposed unilaterally by the state of Washington. Unlike the other restraints at issue in
5 this case, this policy does not grant a degree of private regulatory power to private actors. “A
6 restraint imposed unilaterally by government does not become concerted action within the meaning of
7 the [Sherman Act] simply because it has a coercive effect upon parties who must obey the law.”
8 Fisher v. City of Berkeley, 475 U.S. 260, 266 (1986). Such unilateral restraints on trade imposed
9 purely by the state do not run afoul of the Sherman Act. Therefore, the Court dismisses Costco’s
10 claims regarding the ban on retailer-to-retailer sales of beer and wine.

11 **Other Challenged Restraints**

12 2. On summary judgment, the Court previously determined that the remaining restraints
13 challenged by Costco are irreconcilably in conflict with the federal Sherman Act, are “hybrid” in
14 nature, and are not shielded by the state action immunity doctrine. See Dkt. Nos. 113 and 119. The
15 evidence at trial confirmed these determinations. For the reasons stated in its prior summary judgment
16 orders, the Court finds that Costco has met its burden on the issues for which it has the burden of
17 proof.

18 3. As an affirmative defense, Defendants argue that the challenged restraints may be
19 preserved as valid exercises of state power under the Twenty-first Amendment to the Constitution.
20 Because this is an affirmative defense, the Court concludes that Defendants bear the burden of
21 demonstrating that the challenged restraints are shielded by the Twenty-first Amendment. See, e.g.,
22 Bainbridge v. Turner, 311 F.3d 1104, 1115 n.16 (state has burden of proof on a Twenty-first
23 Amendment defense).

24 4. “The federal interest in enforcing the national policy in favor of competition is both
25 familiar and substantial.” California Retail Liquor Dealers Ass’n v. Midcal Aluminum, 445 U.S. 97,

1 110 (1980). As the Supreme Court has noted, “[a]ntitrust laws in general, and the Sherman Act in
2 particular, are the Magna Carta of free enterprise.” Id. (quoting United States v. Topco Assocs., Inc.,
3 405 U.S. 596, 610 (1972)). Although the Sherman Act is a statute rather than a constitutional
4 provision, “Congress ‘exercis[ed] all the power it possessed’ under the Commerce Clause when it
5 approved the Sherman Act.” Midcal, 445 U.S. at 111. As a result, courts “must acknowledge the
6 importance of the Act’s procompetition policy.” Id.

7 5. The Twenty-first Amendment, which repealed Prohibition, provides that “[t]he
8 transportation or importation into any State, Territory, or possession of the United States for delivery
9 or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.” This
10 provision has been construed as “grant[ing] the State virtually complete control over whether to
11 permit importation or sale of liquor and how to structure the liquor distribution system.” Midcal, 445
12 U.S. at 110.

13 6. The Supreme Court has emphasized that “there is no bright line between federal and
14 state powers of liquor.” Id. In cases where the federal and state powers are in conflict, “[t]he
15 question in each case is ‘whether the interests implicated by a state regulation are so closely related to
16 the powers reserved by the Twenty-first Amendment that the regulation may prevail, notwithstanding
17 that its requirements directly conflict with express federal policies.’” 324 Liquor Corp. v. Duffy, 479
18 U.S. 335, 347 (1987). The Supreme Court has identified several “core interests” reserved to the
19 states under the Twenty-first Amendment. These interests include “promoting temperance, ensuring
20 orderly market conditions, and raising revenue.” North Dakota v. United States, 495 U.S. 423, 432
21 (1990).

22 7. The Court concludes that the challenged restraints are not preserved by the Twenty-
23 first Amendment to the Constitution. As discussed above, these restraints are either ineffective or only
24 of minimal effectiveness in promoting temperance, ensuring orderly markets, or raising revenue. To
25 the extent that the restraints may have a minimal effect in advancing the state’s core interests under the

1 Twenty-first Amendment, the state's interests do not outweigh the federal interest in promoting
2 competition under the Sherman Act. Therefore, the Court concludes that the challenged restraints are
3 preempted by the Sherman Act.

4 8. The LCB should be enjoined from enforcing the following policies:

- 5 a. **"Post and Hold"** policies that require manufacturers and distributors of beer
6 and wine to "post" the prices of their products with the LCB and to "hold"
7 those prices for a full calendar month. See RCW 66.28.180(2)-(3); WAC 314-
8 20-100(2) & (5); WAC 314-24-190(2) & (5).
- 9 b. **Uniform Pricing** policies that require beer and wine distributors to sell their
10 products to every retailer at the same price. See RCW 66.28.170; RCW
11 28.180(2) & (3); WAC 314-12-140; WAC 314-20-100(2), (4) & (5); WAC
12 314-24-190(2), (4) & (5).
- 13 c. **Bans on Credit Sales** of beer and wine. See WAC 314-13-015; RCW
14 66.28.010; WAC 314-20-090; WAC 314-12-140(3).
- 15 d. **Ban on Volume Discounts** for sales of beer and wine. See RCW
16 66.28.180(2)(d) & 3(b); RCW 66.28.170; WAC 314-12-140(3).
- 17 e. **"Delivered Pricing"** policies that require distributors to sell beer and wine at
18 the same "delivered" price to all retailers, even if the retailer pays the freight
19 and picks up the goods itself. See RCW 66.28.180(2)(h)(ii).
- 20 f. **"Central Warehousing" Bans** that prohibit retailers from storing beer and
21 wine at a central warehouse or from operating a warehouse that includes wine,
22 see RCW 66.28.180(2)(h)(ii) and RCW 66.24.185(4), as well as restrictions
23
24
25

1 that would limit the output of wine from a central warehouse operated by a
2 retailer. See WAC 314-24-220(5).³

3 g. **Minimum Mark-Up** policies that impose mandatory 10 percent mark-ups on
4 the sale of beer and wine by manufacturers and distributors. See RCW
5 66.28.010(2); RCW 66.28.180(2)(d) & (3)(b).

6 9. The Court may enjoin antitrust violations pursuant to 15 U.S.C. § 26. The Court finds
7 that it is not necessary to reach Costco's request for relief for antitrust violations under 42 U.S.C. §
8 1983.⁴

9 Stay of Judgment

10 The Court's order will require some significant changes in Washington's existing system for
11 beer and wine sales and distribution. As a result, the Court will stay the judgment in this case during
12 the 30-day period allotted for Defendants to file a notice of appeal. This will give the state an
13 opportunity to assess its options while contemplating appeal. If Defendants wish to seek an extension
14 of a stay beyond that time frame, they should file a motion to do so.

15
16 ³ The restraints that prevent retailers from operating warehouses that include wine (RCW
17 66.24.185(4)) and limit output from wine warehouses (WAC 314-24-220(5)) were not explicitly
18 addressed in the Court's previous orders on summary judgment motions, largely because Costco did
19 not identify those restraints in its complaint. However, Costco raised both restraints in its summary
20 judgment briefing and the Court granted an oral motion by Costco at trial to conform the pleadings to
21 the evidence. Therefore, to the extent that RCW 66.24.185(4) and WAC 314-24-220(5) would
prevent retailers from operating central warehouses that include wine and would limit the output of
wine from a central warehouse operated by a retailer, the Court finds that these restraints are
analytically indistinct from those specifically mentioned the Court's previous summary judgment
rulings.

22 ⁴ The parties have provided virtually no briefing on Costco's § 1983 claims. It is questionable
23 in any case that a § 1983 claim may be based on violations of federal antitrust laws. See, e.g.,
24 Racetrac Petroleum, Inc. v. Prince George's County, 601 F. Supp. 892, 913 n.29 (D. Md. 1985) ("the
25 Court does not believe that violation of the antitrust laws may be the basis for a § 1983 action");
Bonollo Rubbish Removal, Inc. v. Town of Franklin, 886 F. Supp. 955, 965-66 (D. Mass. 1995)
(similar); see generally City of Rancho Palos Verdes v. Abrams, 544 U.S. 113 (2005) (discussing
limitations on maintaining Section 1983 actions based on violations of federal law).

**Entry of Judgment on Costco's Constitutional Claim
Regarding Direct Sales by In-State and Out-of-State Manufacturers**

In a prior order, the Court held that Washington's policy of allowing in-state beer and wine manufacturers to sell their products directly to retailers, while prohibiting out-of-state manufacturers from doing the same, violates the Commerce Clause to the United States Constitution. The Court stayed entry of judgment on that claim to permit the Washington Legislature a reasonable period of time to either withdraw the direct sales privilege from in-state manufacturers or to extend the privilege to out-of-state manufacturers. The Legislature responded by passing a measure that extended the direct sales privilege to out-of-state manufacturers. As such, Costco's challenge to the ban on direct sales by out-of-state manufacturers is arguably moot.

At closing arguments, however, Costco requested that the Court enter a final judgment holding that Washington's former ban on direct sales of beer and wine by out-of-state manufacturers violates the Commerce Clause. Both Costco and the WBWWA suggested that the challenge to this former policy is not moot because the legislation signed by the Governor includes a "sunset provision," meaning that the legislation will expire by June 30, 2008 unless it is renewed.

The Ninth Circuit has noted that "[o]ur circuit, perhaps following the lead of the Supreme Court, has issued somewhat confused pronouncements regarding mootness generally, and mootness in the context of repealed or amended statutes in particular." Jacobus v. Alaska, 338 F.3d 1095, 1103 (9th Cir. 2003). On the one hand, the Ninth Circuit has announced that "[a]s a general rule, if a challenged law is repealed or expires, the case becomes moot." Native Village of Noatak v. Blatchford, 38 F.3d 1505, 1510 (9th Cir. 1994). At the same time, the Supreme Court has held that "[i]t is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289 (1982) (finding that challenge to city ordinance was not mooted by changes in challenged law). The Ninth Circuit has indicated that "[o]ne factor to consider in deciding

1 if a case is moot as a result of subsequent statutory amendments is whether the governmental entity is
2 likely to reenact the offending provision” Coral Const. Co. v. King County, 941 F.2d 910, 928 (9th
3 Cir. 1991). In addition, “even if the government is unlikely to reenact the provision, a case is not
4 easily mooted where the government is otherwise unconstrained should it later desire to reenact the
5 provision.” Id.

6 Here, the State Legislature has voluntarily ended – at least for the next two years –
7 Washington’s policy of allowing in-state beer and wine manufacturers to sell products directly to
8 retailers, while denying that privilege to out-of-state manufacturers. However, it is apparent the State
9 Legislature only adopted this change because this Court granted summary judgment on Costco’s claim
10 that the former policy violated the Commerce Clause. The State Legislature also included a sunset
11 provision in the legislation, meaning that the previous system of discriminating between in-state and
12 out-of-state manufacturers will return unless the Legislature affirmatively acts in the future. Given
13 these circumstances, the Court finds that Costco’s challenge to Washington’s former policy of
14 allowing only in-state manufacturers to sell beer and wine directly to retailers is not moot. The State
15 Legislature has only adopted a temporary change in the challenged policy as a result of this litigation.
16 As such, there is a reasonable likelihood that the former policy may be re-enacted, either through
17 action or inaction by the Legislature. Therefore, the Court will direct the entry of final judgment on
18 Costco’s challenge to this policy.

19 Conclusion

20 The restraints challenged by Costco are plainly anti-competitive, and there is no dispute that
21 these restraints increase the average cost of beer and wine in Washington. Defendants argue that the
22 restraints should nonetheless be upheld as a valid exercise of the state’s power under the Twenty-first
23 Amendment, notwithstanding their anti-competitive nature. However, the effectiveness of these
24 restraints in advancing the state’s interests under the Twenty-first Amendment has largely gone
25

1 unstudied, and there is little evidence that the restraints are effective in advancing the state's interests
2 in promoting temperance, ensuring orderly market conditions, or raising revenue.

3 To the extent that the restraints may have a minimal effect in advancing the state's interests
4 under the Twenty-first Amendment, the Court finds that the state's interests do not trump the federal
5 interest in promoting competition. The citizens of this nation have long relied upon a healthy
6 competitive market to distribute goods efficiently and economically, a policy that is embodied by the
7 Sherman Act of 1890. In light of the minimal effectiveness of the challenged restraints in advancing
8 the state's interests under the Twenty-first Amendment, these restraints must yield to the national
9 goals of a competitive, free market economy. However, the Court's ruling does not leave the state
10 powerless to achieve its legitimate interests of promoting temperance, ensuring orderly market
11 conditions for beer and wine, and raising revenue. For example, the state may raise revenue through
12 the sale of alcohol and the collection of taxes, control who is selling alcohol by enforcement of
13 licensing, and educate the public on the societal costs of abusive alcohol consumption.

14 The Court's ruling will require changes in Washington's regulatory system for beer and wine.
15 It is the job of the Washington Legislature and not this Court to determine how to best revise
16 Washington's system in a manner that is consistent with the United States Constitution and federal
17 law. The Court urges the Legislature to do so with dispatch.

18 The Court will stay the judgment in this case during the 30-day time period allotted to
19 Defendants to file a notice of appeal. If Defendants wish to seek an extension of the stay beyond that
20 time frame, they should file an appropriate motion.

21 The clerk is directed to provide copies of this order to all counsel of record.

22 Dated: April 21, 2006.

23 s/Marsha J. Pechman
24 Marsha J. Pechman
25 United States District Judge

Appendix O
U.S. District Court Amended Judgment

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COSTCO WHOLESALE CORPORATION,

Plaintiff,

v.

ROGER HOEN, et al.,

Defendants, and

WASHINGTON BEER AND WINE
WHOLESALE ASSOCIATION,

Intervenor-Defendant

No. C04-360P

AMENDED JUDGMENT

This action came to trial before the Court. The issues have been tried and a decision has been rendered. Based upon the Findings of Fact and Conclusions of Law entered in this matter, and the records and files herein, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. Judgment is entered in favor of plaintiff Costco Wholesale Corporation on Costco's First Claim, except on Costco's challenge to Washington's ban on retailer-to-retailer sales of beer and wine. As a result, the following challenged restraints are preempted by the federal Sherman Act, are

1 not shielded by the Twenty-first Amendment and are, thus, invalid and their enforcement is enjoined
2 pursuant to Fed. R. Civ. Pro. 65(d) and 15 U.S.C. § 26:

- 3 a. "Post and Hold" policies that require manufacturers and distributors of beer and
4 wine to "post" the prices of their products with the LCB and to "hold" those
5 prices for a full calendar month. See RCW 66.28.180(2)-(3); WAC 314-20-
6 100(2) & (5); WAC 314-24-190(2) & (5).
- 7 b. Uniform Pricing policies that require beer and wine distributors to sell their
8 products to every retailer at the same price. See RCW 66.28.170; RCW
9 28.180(2) & (3); WAC 314-24-140; WAC 314-20-100(2), (4) & (5); WAC
10 314-24-190(2), (4) & (5).
- 11 c. Bans on Credit Sales of beer and wine. See WAC 314-13-015; RCW
12 66.28.010; WAC 314-20-090; WAC 314-12-140(3).
- 13 d. Ban on Volume Discounts for sales of beer and wine. See RCW
14 66.28.180(2)(d) & (3)(b); RCW 66.28.170; WAC 314-12-140(3).
- 15 e. "Delivered Pricing" policies that require distributors to sell beer and wine at the
16 same "delivered" price to all retailers, even if the retailer pays the freight and
17 picks up the goods itself. See RCW 66.28.180(2)(h)(ii).
- 18 f. "Central Warehousing" Bans that prohibit retailers from storing beer and wine
19 at a central warehouse or from operating a warehouse that includes wine, see
20 RCW 66.28.180(2)(h)(ii) and RCW 66.24.185(4), as well as restrictions that
21 would limit the output of wine from a central warehouse operated by a retailer.
22 See WAC 314-24-220(5).
- 23 g. Minimum Mark-Up policies that impose mandatory 10 percent mark-ups on the
24 sale of beer and wine by manufacturers and distributors. See RCW
25 66.28.010(2); RCW 66.28.180(2)(d) & (3)(b).

2. Judgment is also entered in Costco's favor on Costco's Second Claim and the related portion of Costco's Third Claim. Discrimination favoring in-state producers of wine and beer over out-of-state producers in selling to retailers violates the Commerce Clause and 42 U.S.C. § 1983. It is unnecessary for the Court to reach Costco's request for relief for antitrust violations under 42 U.S.C. § 1983. The Court may grant injunctive relief and attorney's fees and costs under 15 U.S.C. § 26.

3. Judgment is entered in defendants' favor on Costco's Fourth Claim, without prejudice to Costco pursuing such claims in state court. Judgment is also entered in defendants' favor on Costco's claim challenging Washington's ban on retailer-to-retailer sales of beer and wine.

4. Except as to Costco's Second Claim and related portion of Costco's Third Claim, the Judgment is stayed until the Court issues a ruling on Defendants' Motion for Stay of Order and Judgment Enjoining Enforcement of Certain Rules and Laws Pending Appeal. (Dkt. No. 158).

5. Briefing regarding Costco's request for attorneys' fees and costs shall correspond with the following schedule: Costco shall supplement its motion outlining its request for an award of attorneys' fees, filed May 8, with a supporting memorandum and declarations by May 26. Defendants' responses are due June 30, and Costco's reply is due July 21.

DATED this 25th day of May, 2006.

s/Marsha J. Pechman
Marsha J. Pechman
United States District Judge

Appendix P
U.S. District Court
Order on Defendant's Motion for Stay

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COSTCO WHOLESALE CORPORATION,

Plaintiff,

v.

ROGER HOEN, et al.,

Defendants, and

WASHINGTON BEER AND WINE
WHOLESALE ASSOCIATION,

Intervenor-Defendant

No. C04-360P

ORDER ON DEFENDANTS'
MOTION FOR STAY

This matter comes before the Court on the Liquor Control Board (LCB) Defendants' motion for stay of order and judgment enjoining enforcement of certain rules and laws pending appeal. (Dkt. No. 158). The Court has reviewed the materials submitted by the parties, including a brief filed by the Intervenor-Defendant Washington Beer and Wine Wholesalers Association (WBWWA).¹ Being fully

¹ On the day that Plaintiff's brief in opposition to the LCB Defendants' motion was due, the WBWWA filed a 12-page brief "joining" the LCB Defendants' motion and offering additional arguments in support of the motion. (Dkt. No. 175). The Court has reviewed the WBWWA's brief, despite the fact that the procedure followed by the WBWWA is not authorized by the Local Civil Rules of this Court. See Local Civil Rule 7(b)(2) (authorizing parties to file briefs in opposition to a motion, but making no provision for filing briefs to lend additional support to another party's motion). Because the WBWWA filed its brief on the same day that Plaintiff's opposition brief was due, Plaintiff did not have the opportunity under the Local Civil Rules to file a written response to the WBWWA's additional arguments.

1 advised and having heard oral argument on this matter, the Court GRANTS in part and DENIES in
2 part the LCB Defendants' motion. The Court finds that a partial stay of judgment is warranted until
3 the next regular session of the Washington State Legislature has been completed in order to provide
4 the Legislature with an opportunity to respond to the Court's ruling. Therefore, the Court will extend
5 the stay of judgment in this matter until May 1, 2007. The reasons for the Court's order are set forth
6 below.

7 **Background**

8 In this litigation, Costco has challenged various Washington state policies governing the sale
9 and distribution of beer and wine. On December 21, 2005, the Court granted in part Costco's motion
10 for summary judgment on its claim that Washington's policy of allowing only in-state beer and wine
11 producers to sell their products directly to retailers violates the Commerce Clause. The Court stayed
12 entry of judgment on that claim until April 14, 2006 to provide the State Legislature with the
13 opportunity to address this issue by either: (1) extending the direct sales privilege to out-of-state
14 producers; or (2) withdrawing the privilege from in-state producers. The Legislature chose to enact
15 legislation extending the direct sales privilege of out-of-state producers, although it included a "sunset
16 provision" that provides that the new law will expire unless it is renewed.

17 Costco also raised federal antitrust claims challenging a number of Washington state policies
18 governing beer and wine sales and distribution. Following a bench trial, the Court entered its findings
19 of fact and conclusions of law on April 21, 2006. The Court found that the following restraints
20 challenged by Costco ("the challenged restraints") should be enjoined because they are preempted by
21 the federal Sherman Act and are not shielded by the Twenty-first Amendment:

- 22 (a) "Post and hold" policies that require beer and wine distributors and manufacturers to
23 "post" the prices of their products with the state and to "hold" those posted prices for a
full calendar month.
- 24 (b) Uniform pricing policies that require beer and wine distributors to sell their products to
25 every retailer at the same price.

- 1 (c) Prohibitions on credit sales of beer and wine.
- 2 (d) Prohibitions on volume discounts for beer and wine sales.
- 3 (e) Policies that require beer and wine distributors to charge the same “delivered” price to
- 4 all retailers, even if the retailer pays the freight and picks up the goods itself.
- 5 (f) Prohibitions on central warehousing of beer and wine by retailers.
- 6 (g) Policies that require a 10% minimum mark-up on sales of beer and wine from
- 7 producers to wholesalers, as well as a 10% minimum mark-up on sales of beer and
- 8 wine from distributors to retailers.

9 The Court entered a judgment on April 24, 2006, which was amended on May 25, 2006. The LCB
 10 Defendants have filed a notice of appeal from the amended judgment and have moved to stay the
 11 judgment pending appeal. The Court initially stayed enforcement of the judgment for 30 days. By
 12 agreement of the parties, the Court included a provision in the amended judgment that extended the
 13 stay until the Court rules on this motion.

14 Analysis

15 The LCB Defendants bring their motion to stay pursuant to Fed. R. Civ. P. 62(c), which
 16 provides in relevant part:

17 When an appeal is taken from an interlocutory or final judgment granting, dissolving, or
 18 denying an injunction, the court in its discretion may suspend, modify, restore, or grant an
 19 injunction during the pendency of the appeal upon such terms as to bond or otherwise as it
 20 considers proper for the security of the rights of the adverse party. . . .

21 “This rule codifies the inherent power of a court ‘to preserve the status quo where, in its sound
 22 discretion, the court deems the circumstances so justify.’” Christian Science Reading Room Jointly
 23 Maintained v. City & County of San Francisco, 784 F.2d 1010, 1017 (9th Cir. 1986)

24 The question of whether a stay pending appeal is warranted requires consideration of four
 25 factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the
 merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the
 stay will substantially injure the other parties interested in the proceeding; and (4) where the public
 interest lies.” Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

1 The Ninth Circuit has noted that “[t]he standard for evaluating stays pending appeal is similar
2 to that employed by district courts in deciding whether to grant a preliminary injunction.” Lopez v.
3 Heckler, 713 F.2d 1432, 1435 (9th Cir. 1983). Under this standard, a party must demonstrate either:
4 (1) a probability of success on the merits and the possibility of irreparable injury; or (2) that serious
5 legal questions are raised and that the balance of hardships tips sharply in its favor. Id. Consistent
6 with Hilton, the public interest is also a factor to be “strongly considered.” Id.

7 1. Merits of Appeal

8 The Court does not find that the LCB Defendants have demonstrated a strong likelihood of
9 success on appeal. However, “[w]hen the request for a stay is made to a district court, common sense
10 dictates that the moving party need not persuade the court that it is likely to be reversed on appeal.”
11 Canterbury Liquors & Pantry v. Sullivan, 999 F. Supp. 144, 150 (D. Mass. 1998). Instead, “the
12 movant must only establish that the appeal raises serious and difficult questions of law in an area
13 where the law is somewhat unclear.” Id. Here, the Court finds that the antitrust issues in this case
14 present reasonably serious and difficult questions of law in an area where the law is not entirely clear,
15 particularly given the breadth of Costco’s challenge to state policies.² Costco’s antitrust claims
16 required a detailed four-part analysis and presented a number of issues of law that are not entirely
17 well-settled.

21 ² As discussed earlier, Costco also raised a Commerce Clause challenge to Washington’s
22 policy of allowing only in-state beer and wine manufacturers to sell directly to retailers. The Court
23 does not regard this constitutional claim as posing a difficult question of law, given the guidance
24 provided by the Supreme Court’s ruling in Granholm v. Heald, 544 U.S. 460 (2005). In any case, the
25 State Legislature responded to the Court’s ruling on Costco’s constitutional challenge by extending
the direct sales privilege to out-of-state manufacturers, subject to a sunset provision. As a result,
today’s ruling should not be construed as staying the Court’s judgment on Costco’s constitutional
claims.

2. Injury to Defendants if a Stay Does Not Issue

Although the LCB Defendants and the WBWWA argue that they will suffer irreparable harm if a stay of judgment does not issue, neither party has offered affidavits or declarations to support their contentions. The LCB Defendants raise three primary arguments: (1) they will not be able to regulate the sale and distribution of beer and wine effectively if a stay does not issue; (2) they will be unable to effectively collect the “liter tax” on beer and wine without a stay; and (3) their appeal may become moot if a stay is not issued. The WBWWA also argues that “in the absence of a stay the Court’s ruling will affect the business practices of WBWWA members and the very structure of their businesses” and will “impact their relationships with customers and creditors, and could jeopardize the livelihood of their employees.” (Dkt. No. 175 at 9).

A. LCB’s Ability to Regulate

The LCB Defendants assert that “[i]f the Court’s order takes effect, the LCB will be without effective ability to regulate.” (Opening Brief at 4). However, as Costco notes, other states operate their beer and wine regulatory systems without the challenged restraints. Costco also observes that the State Liquor Act includes a severability clause that provides that if any clause, part, or section of the act is invalidated, such judgment shall not affect nor invalidate the remainder of the act. See RCW 66.98.020. The Court’s judgment does not enjoin many aspects of the beer and wine regulatory system, such as laws and regulations regarding licensing, advertising, promotional activities, labeling, warnings, below-cost sales, free alcohol, public consumption, and sales to minors and the intoxicated. As a result, the LCB Defendants’ contention that the Court’s judgment would leave the LCB “without effective ability to regulate” must be regarded as an overstatement.

The LCB Defendants raise two specific regulatory concerns: (1) the Court’s judgment will hinder the LCB’s ability to enforce laws prohibiting below-cost sales of beer and wine; and (2) the Court’s ruling will hamper their ability to enforce laws governing the separation of tiers in the beer and wine distribution system. The Court considers each concern below.

1 **Ability to Enforce Laws Against Below-Cost Sales:** First, the LCB Defendants argue that
2 enjoining the challenged restraints will impact their ability to enforce laws against below-cost sales of
3 beer and wine. Among other things, the challenged restraints require all producers and wholesalers to
4 post their prices with the LCB and hold the posted prices for a month. Beer and wine distributors
5 must also charge uniform prices to all retailers, must not sell beer and wine on credit to retailers, and
6 must charge all retailers the same “delivered” price regardless of the actual delivery costs. The LCB
7 Defendants suggest that without such policies, the agency “would have extreme difficulty enforcing
8 the unchallenged ban on retail sales at a price below acquisition.” (Opening Brief at 4).

9 In response, Costco notes that the LCB has broad authority to inspect the books and records
10 of beer and wine manufacturers and license holders. See RCW 66.08.130 & .140. The LCB may also
11 seek a search warrant with probable cause (RCW 66.32.020) and seek appointment of an
12 administrative law judge with authority to compel testimony and document production (RCW
13 66.24.010(3)(d)). Costco also suggests, and the Court agrees, that the Court’s judgment should not
14 be construed as barring a requirement that beer and wine producers and distributors confidentially post
15 their prices with the LCB, provided that a confidential price posting requirement is not accompanied
16 by a “hold” requirement. As a result, Costco maintains that enforcing the Court’s judgment pending
17 appeal would not leave the LCB without the ability to investigate and enforce laws against below-cost
18 sales.

19 The challenged restraints may facilitate the LCB’s ability to enforce laws against below-cost
20 sales of beer and wine. However, the LCB Defendants have not offered affidavits or declarations to
21 support their contentions that they would have “extreme difficulty” enforcing this law without the
22 challenged restraints, nor do they specify what additional regulatory authority or policies may be
23 needed in order to enforce laws against below-cost sales if the challenged restraints are enjoined. This
24 lack of evidence and specificity makes it difficult for the Court to evaluate the degree of harm that the
25 LCB Defendants would experience if a stay does not issue. In any case, to the extent that the LCB

1 Defendants believe that the State Legislature must enact new legislation to facilitate the LCB's ability
2 to enforce laws against below-cost sales in light of the Court's judgment, such a concern would only
3 warrant a stay until the State Legislature has had an opportunity to respond to the Court's ruling.

4 **Ability to Enforce Separation of Tiers:** The LCB Defendants suggest that eliminating the
5 challenged restraints will make it more difficult to "efficiently and reliably determine that
6 manufacturers are at arms length from retailers" and that "[w]ithout the 'buffer' of a mandatory middle
7 tier (or an effective set of replacement controls) the LCB will be hard pressed to regulate prohibited
8 practices." (Opening Brief at 5).

9 The LCB Defendants appear to argue that the Court's judgment would eliminate the "buffer of
10 a mandatory middle tier" – i.e., beer and wine wholesalers – from the current system. However, as
11 Costco notes, it was the State Legislature that decided to allow and expand direct sales of beer and
12 wine from manufacturers to retailers. Because the State Legislature has elected to permit direct sales
13 from manufacturers to retailers without requiring products to pass through a separate wholesaler tier,
14 the Court fails to see how enjoining the challenged restraints will create a risk of irreparable harm by
15 eliminating the "buffer of a mandatory middle tier."

16 B. Ability to Collect Liter Tax

17 The LCB Defendants also suggest that unless a stay is issued, they will be hampered in their
18 ability to collect the "liter tax" on beer and wine. This tax is presently collected at the wholesaler
19 level. The LCB Defendants assert that "[w]ithout a stay, the liter tax would still be due to the LCB
20 but no consistent, reliable mechanism would exist for determining what amount of tax was due, when
21 it came due and from what entity it could be collected" and that "[w]ithout a stay the current tax
22 collection system will be set aside with no replacement in sight." (Opening Brief at 6).

23 Aside from these conclusory assertions, LCB Defendants offer no additional evidence or
24 argument to explain how enjoining the challenged restraints would hinder the LCB's ability to collect
25 the liter tax. As Costco observes in its opposition brief, "none of the challenged restraints are part of

1 the tax collection system” (Opp. Brief at 11) – a point that the LCB Defendants do not dispute in their
2 reply brief. As a result, the LCB Defendants have offered little basis to find that difficulties in
3 collection of the liter tax would constitute irreparable harm sufficient to warrant a stay. And once
4 again, to the extent that the LCB Defendants believe that the State Legislature must enact new
5 legislation to facilitate the LCB’s ability to collect the liter tax, such a concern would only warrant a
6 stay until the State Legislature has had an opportunity to enact such legislation.

7 C. Mootness Concerns

8 In their reply brief, the LCB Defendants argue for the first time that unless the Court’s
9 judgment is stayed, their appeal may become moot. The LCB Defendants present no legal authority to
10 support this argument, and there is no basis for the Court to find that the LCB Defendants would be
11 injured due to this concern.

12 D. Injury to Beer and Wine Wholesalers

13 The WBWWA argues that if a stay of judgment does not issue, “[t]he potential harm to
14 WBWWA members from the Court’s ruling is the disruption of an entire industry, which extends far
15 beyond mere economic damage.” (Dkt. No. 175 at 9). The WBWWA maintains that the absence of a
16 stay “will affect the business practices of WBWWA members and the very structure of their
17 businesses” and “will also impact their relationships with customers and creditors, and could
18 jeopardize the livelihood of their employees.”³ Id.

19 As noted earlier, Costco did not have an opportunity to file a written response to the
20 WBWWA’s brief because the WBWWA filed a 12-page brief “joining” the LCB Defendants’ motion
21 on the same date that Costco’s brief in opposition to the LCB Defendants’ motion was due. Putting
22 aside this concern, the Court does not find that the WBWWA has offered compelling evidence that its

23 ³ The WBWWA also expresses concern that failure to stay the judgment will harm small
24 retailers of beer and wine. However, the WBWWA represents beer and wine wholesalers, not small
25 retailers.

1 members will suffer irreparable harm if a stay does not issue. The WBWWA offers no affidavits or
2 declarations in support of its assertions of irreparable harm. The Court recognizes that enjoining the
3 challenged restraints will end certain requirements that beer and wine wholesalers have operated under
4 for a number of years, which will likely result in greater competition in the marketplace. However,
5 “[t]he mere existence of competition is not irreparable harm, in the absence of substantiation of severe
6 economic impact.” Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841,
7 843 n.3 (D.C. Cir. 1977).

8 3. Injury to Costco If a Stay Issues

9 For its part, Costco’s briefing does not suggest that the company will be substantially injured if
10 the Court’s judgment is stayed pending appeal. As a result, Costco provides the Court with little if
11 any basis to find that the company will be significantly prejudiced by a stay. Costco’s ability to
12 operate profitably despite the challenged restraints also tends to suggest that Costco would not suffer
13 substantial harm if a stay does not issue. As one court noted in a case challenging aspects of
14 Massachusetts’ regulatory system, “a stay would merely perpetuate pending appeal a regulatory
15 system under which it appears that plaintiffs have been able to operate profitably, although not as
16 profitably as they expect to operate if non-discriminatory price competition is permitted.” Canterbury
17 Liquors & Pantry v. Sullivan, 999 F. Supp. 144, 151 (D. Mass. 1998).

18 4. Public Interest

19 In some respects, the public interest may be advanced if a stay does not issue pending appeal.
20 As Costco notes, denying a stay would advance the public’s interest in promoting competition and the
21 underlying policy goals of the Sherman Act. Denying a stay may also result in somewhat lower beer
22 and wine prices for some consumers.

23 At the same time, smaller retailers and their customers may pay somewhat higher prices for
24 beer and wine if the Court’s judgment is not stayed. In addition, the Court is mindful of the LCB
25 Defendants’ argument at trial that the restraints promote temperance by increasing the average prices

1 of beer and wine in Washington state. As the Court noted in its findings of fact and conclusions of
2 law, the State Legislature could readily advance this goal in a manner that does not violate federal
3 antitrust law by increasing excise taxes on beer and wine. However, the Legislature adjourned its
4 2006 regular session before the Court entered its judgment and has not had an opportunity to take
5 action in response to the Court's ruling. The public interest would appear to weigh in favor of
6 providing the State Legislature with the opportunity to determine whether it wishes to take such a step
7 before the Court's judgment takes effect.

8 The question of whether the State Legislature may wish to raise excise taxes on beer and wine
9 to promote temperance is one of many policy decisions that the State Legislature may confront in light
10 of the Court's ruling. The Court's judgment would enjoin a number of policies adopted by the State
11 Legislature in an important area of public concern. Many of the policies have been in place, in one
12 form or another, since the end of Prohibition. Under these circumstances, the Court finds that the
13 public interest would be served by staying the Court's judgment until the State Legislature has had an
14 opportunity to respond to the Court's ruling. The public has a strong interest in having its elected
15 representatives determine, in an orderly and deliberate fashion, whether new policies should be
16 adopted in response to the Court's judgment.

17 Conclusion

18 The Court finds that the LCB Defendants' appeal raises serious and difficult questions of law,
19 at least with respect to Costco's antitrust claims. The Court also finds that Costco has not
20 demonstrated that it will be significantly prejudiced if a stay issues. For their part, the LCB
21 Defendants and the WBWWA have not made an especially compelling showing that the balance of the
22 hardships tips so sharply in their favor as to warrant a stay. Their arguments are largely conclusory or
23 speculative and are not supported with affidavits or declarations. However, as the Court noted in its
24 findings of fact and conclusions of law, eliminating the challenged restraints will require some
25 significant changes in Washington's existing system for beer and wine sales and distribution. In

1 addition, enjoining the challenged restraints will eliminate some tools that the LCB has used to enforce
2 laws prohibiting below-cost sales of beer and wine. As a result, it may be necessary for the LCB to
3 seek additional enforcement tools and regulatory authority from the State Legislature in light of the
4 Court's judgment. In addition, the public interest would be served by providing the State Legislature
5 with an opportunity to decide whether it wishes to adopt new policies regarding beer and wine sales
6 and distribution before the Court's judgment takes effect.

7 Under these circumstances, the Court finds that a partial stay of the judgment in this matter is
8 warranted until the State Legislature has had an opportunity to take action in response to the Court's
9 ruling. The next regular session of the State Legislature will begin on January 8, 2007, the second
10 Monday in January. See RCW 44.04.010. Under the Washington Constitution, the State
11 Legislature's regular session in an odd-numbered year may last no more than 105 days. See Wn.
12 Const., art. II, §12(1). As a result, the next regular session of the Legislature should be completed by
13 April 23, 2007.

14 Therefore, the Court will extend its stay of judgment in this matter until May 1, 2007, with the
15 exception that the stay will not apply to the Court's judgment on Costco's constitutional claims
16 regarding policies that permit only in-state beer and wine manufacturers to sell their products directly
17 to retailers. Any further requests for a stay pending appeal in this matter should be directed to the
18 Court of Appeals. As Costco has not argued in its briefing that it would suffer injury if the stay is
19 extended or that security should be required as a condition of extending the stay, the Court will not
20 require defendants to post a bond.

21 The clerk is directed to provide copies of this order to all counsel of record.

22 Dated: September 14, 2006

23 s/Marsha J. Pechman
24 Marsha J. Pechman
25 United States District Judge

Appendix Q

Task Force Members

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Appendix Q

Task Force Members

Three-Tier Task Force Members

Name	Representing	Organization
Chairperson - Nate Ford		
Legislators (4)		
Jeanne Kohl-Welles	Washington State Senate	
Linda Evans Parlette	Washington State Senate	
Steve Conway	Washington State House of Representatives	
Richard Curtis / Cary Condotta	Washington State House of Representatives	
Industry Representatives (10)		
Mike Hale	WA Beer Manufacturer	Hale's Ale
Tim Hightower	WA Wine Manufacturer	WA Wine Institute
Shelley Sieveking	Out-of-state Beer Manufacturers	Anheuser-Busch
Katie Jacoy	Out-of-state Wine Manufacturers	California Wine Institute
Lynn Gust	Large Grocer	Fred Meyer
Steve Lynn	Specialty Retailer	Water to Wine Shop
John McKay	Large Retailer	Costco
Perry Park	Small Grocer	Korean-American Grocers Association
Anthony Anton / Gene Vosberg	On-Premises Licensees	WA Restaurant Association
Phil Wayt	Distributors	Washington Beer & Wine Wholesalers Association
Local Government / Prevention Community (4)		
Carol Owens	Prevention/Treatment	Governor's Council on Substance Abuse
Tom Carr	Local Government	Seattle City Attorney
Greg Hopkins	Local Law Enforcement	City of Tacoma Policy Department
Mary Segawa	Prevention/Treatment	Together!
Consumer / Public Citizen (1)		
Fred Hellberg	Consumers	
LCB Representative (1)		
Rick Garza	Liquor Control Board	